

TOWARDS FREEDOM

Documents on the
movement for
independence in India

1943-1944

Part 2

The documents in this volume depict the political and social ferment in the Indian subcontinent between 1943 and 1944 which were the most critical years of World War II. Though the Congress had been immobilized after August 1942 by the widescale arrests of its leaders, the Raj found its credibility steadily weakened and its legitimacy repeatedly challenged. The suppression of popular unrest by the misuse of wartime emergency rules was sharply criticized by the judiciary. Journalists mounted a united stand against censorship. There was heightened consciousness and organizational activity among the peasants, the working class and the student community.

The documents in this volume highlight the activist role of judges in restraining the executive; the confidential reports on growing militant Hindu communalism and the indifference of officials to the ominous growth of communalized political parties. Here for the first time is published evidence given in camera to the Famine Commission in 1944. The political commitment of cultural organizations, artists and photographers is also graphically illustrated.

Towards Freedom

Documents on the Movement for Independence in India
1943-1944

PART II

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III

Struggle in the Law Courts

Although the documents specific to 1943 start from the one dated 4 January 1943 certain documents of 1942 have been included as being sufficiently close in time and of relevance.

In the general introduction we have high-lighted some of the main issues over which nationalists fought a battle in the Courts and how the government tried to circumvent their efforts; these were the ordinances setting up Special Criminal Courts, the right of Habeas Corpus, the facilities available to Security Prisoners detained without trial (including the facility of having access to legal advice), the practice of prolonged interrogation of prisoners in police custody, and the efforts by the Home Department to stop all government assistance to organisations like the All-India Spinners Association and the All-India Village Industries Association.

Without repeating the points made there, we would like to elucidate the significance of some of the documents in this collection.

There are a number of documents on the Ainsworth case (Docs 6-8, 9, 12, 14, 17, 52) — the case of a British police officer who was responsible for the death of a prisoner while in police custody.¹ The documents are from the private correspondence of Viceroy Lord Linlithgow with the Governor of Bihar, Sir Thomas Rutherford. They illustrate the way the Raj tried to extricate itself from an embarrassing situation. The police officer's culpability could not be denied, but to maintain the prestige of the Raj proposals were made to soften the punishment due to him. Bihar was one of the provinces most severely affected by the '42 movement. Memories of Police brutalities like this must have lingered on and played their part in mobilising anti-imperial opinion in the post-war years.

Indeed, many administrators, lawyers and judges were aware that left to itself the police force could not be fully trusted to see that justice was done according to the letter and spirit of the law. This is why the Punjab Government failed to get the other provinces and the Home Department to agree to their suggestion that 'Scientific interrogation' in police custody for an indefinite period, as practised in the Punjab (especially the Lahore fort), should be an all-India policy. There are some documents of 1942, which show that the Home Department had some doubts about the length of time a person could be kept in police custody.² The documents printed here (Nos 23, 38, 39, 40, 46, 48, 62, 73, 96) show that, notwithstanding the support given to the Punjab proposal by the D.I.B. Pilditch, the idea found no favour with seasoned imperial administrators like Governor Sir Maurice Hallett (a former Secretary to the Home Department). In the end, the idea of making the procedure in the Lahore fort generally applicable all over India had to be dropped, because of the widespread belief that it violated the spirit of the Criminal Procedure Code, section 491.³

The biggest blow to the coercive apparatus created after the Quit India movement had been launched was the setting aside of Ordinance II of 1942 by a majority of the Federal Court on 4 June 1943. (Doc. No. 35). Its repercussions have already been discussed in the main introduction, and so it will be superfluous to comment on it further. From the last week of April 1943, after the Federal Courts' verdict on D.I.R. 26 in Talpade's case (Doc. No. 27), the government was busy drafting Ordinances to strengthen its hand. However when it passed

another ordinance on 5 June 1943 to save D.I.R. 26 (Ordinance XIX of 1943), it was sharply commented on in the Allahabad High Court; the strictures of Justice Bajpai¹ are worth noting (Doc. 109).

The Judiciary was unhappy at the way the government was functioning, although the Bombay High Court was less harsh on the government than the Courts in Calcutta, Patna, Nagpur and Allahabad (Docs 83, 84, 100, 109). The administration in Bengal was rattled by the legal reverses, and many of the documents relating to the months of August and September 1943 (Nos 64, 83, 85, 89, 90) show this.

Among the judgements worthy of attention are the following: Observations of Justice Vivian Bose² on the Habeas Corpus question in the Nagpur High Court (No. 5), where he quoted from the classic dissenting judgement of Lord Atkin in the Privy Council,³ and the caustic interchange between Justice A.N. Sen⁴ of the Calcutta High Court and Justice Rowland of the Federal Court over the constitutional validity of Ordinance 2 of 1942. (Docs No. 26, 34 and 45).

1 These are to be found in Home Poll – 44/6/42 – Poll (I).

[NAI]

2 File 44/6/42 – Poll (I), Letter of Chief Commissioner, Delhi to GOI (Home), 27 April 42 and notings thereon

3 Section 491 dealt with the question of Habeas Corpus. It has been explained in footnote 7 of the general introduction

4 1942 A.C. 206 (1941) 3 All E.R. 338 *Liversidge v. Anderson*

Other Documents Relevant for this Chapter

Doc. 28 in Chapter I – Sect. B.

Doc. 101 in Chapter I – Sect. B.

Doc. 138 in Chapter II.

1: Vishnu Prasad v. Emperor – Bennet, J. (26 Oct. 1942)

AIR, Vol. 30, 1943, Oudh, pp. 41-4

Criminal Revn. Appln. No. 1942, Decided on 26th October 1942, for revision of order of Sess Judge, Lucknow, dt 2nd October 1942 Ed.

Dr J.N. Misra and B.P. Chandra for applicant.

[*Omitted*: Two opening paragraphs giving some dates relevant to the promulgation of Ordinance of 1942 in U.P., and basic facts of the earlier trials of the appellant – Ed.]

The contention in the present application is that the said ordinance has no application to pending cases, nor has it any retrospective effect in connection with offences committed before coming into force of the said ordinance, i.e., 20th August 1942, nor has it any application to offences unconnected with the state of emergency for which it was promulgated.

Apart from these contentions two other questions were also raised in the course of arguments, the first whether the ordinance was legally promulgated under S.72, Government of India Act (Ninth Schedule) and the second whether power to promulgate ordinances is

connected with the Defence of India Act. As regards the first question learned counsel for the applicant referred me to the provision which formerly existed in S.72 limiting the life of an ordinance to six months from its promulgation, but he conceded that as the section had been amended and this limiting provision deleted, he could not press this point, on the second point I am unable to see any connexion between the Ordinance and the Defence of India Act, the ordinance having been made and promulgated under S.72, Government of India Act, Ninth Schedule. A similar question appears to have been raised before the Session Judge, who observed that the argument that the power to promulgate the ordinance is derived from this Act has no basis.

I come now to the contentions advanced in the application. The first is that the ordinance does not apply to pending cases. In support of this contention certain orders passed by myself as the Judge nominated by the Provincial Government under S.8 of the Ordinance to review proceedings under the ordinance were referred to. The cases in which these orders were passed had been committed to the Court of Session before the order of the District Magistrate directing their trial by the Special Judge was passed, and the legality of this order being considered doubtful the proceedings under the ordinance were set aside and the records were returned to the Session Judge for trial under the ordinary provisions of law. These cases are clearly distinguishable from the present case, where save for the appearance of the accused in the Magistrate's Court, no proceedings preparatory to commitment to Session had taken place before the order of the District Magistrate was passed. In the orders passed in the case cited, it was said that the ordinance does not refer to pending cases. It is argued from this that cases in which the accused had appeared before the Magistrate for trial under the ordinary law should not be sent to the Special Judge for trial under the ordinance.

I do not take this view. The District Magistrate is given very wide powers under the Ordinance of directing what cases shall be tried thereunder, and I see no reason to limit these powers by holding that he has not the power to direct that a case which is awaiting trial, but in which no proceedings, other than the production of the accused in Court or the summoning of witnesses, have taken place, shall be tried under the Ordinance. Where the magisterial enquiry has been completed and the case has been committed to the Court of Session for trial by that Court I do not think that the District Magistrate has power under the Ordinance to intervene, take the case out of the hands of the Sessions Judge, and direct that it be tried not under the ordinary law, which has governed the procedure previously followed in the case, but under the ordinance. On general principles, it would appear undesirable that a different procedure should be adopted at different stages of a case, procedure under the ordinary law initially, and a change sometime thereafter to the procedure prescribed by the Ordinance. The case in A.I.R. 1931 Bom.411 was cited in support of the contention that an enquiry or trial commences with the appearance of the accused before the Magistrate to answer the charges. In that case the question was whether the accused were entitled to an adjournment under Sub-s (8) of S.526, Criminal P.C., on their informing the Magistrate under this sub-section on their appearance before him, and before any evidence had been recorded of their intention to apply for transfer of the case. The sub-section provides that the case shall be adjourned on such intimation being given at any stage of the enquiry or trial. A bench of the Bombay High Court held that the enquiry of the case was not deferred till such time as the Magistrate would begin to record evidence, but commenced, not indeed with the lodging of complaint or even with the issue of process but with their appearance (i.e., of the accused) on such processes before the Magistrate to answer the charges.

In view of the various grounds on which transfer may be applied for under S.526, most of them arising out of some circumstances not connected with the actual conduct of the enquiry or trial, it would clearly be futile to hold that some evidence must be recorded before the intimation under sub.S.(8) can be given. No such consideration arises in connexion with orders for pending cases to be tried under the Ordinance, nor is there any bar in my opinion to such orders being passed when the enquiry or trial has not commenced in the ordinary sense of the word, that is when no evidence has been recorded. The accused cannot be prejudiced in any way by such orders. As regards the contention that the ordinance has no retrospective effect so as to apply to offences committed before it came into force, it is true that there is no express provision making it applicable to such offences, but I think from the wide powers which are given to District Magistrates to direct what cases shall be tried under it, that it must be held to apply to all offences, whether committed before or after 20th August, in which the trial has not already commenced, that is in which evidence has not been recorded, under the ordinary law.

For the same reason I cannot hold that the ordinance has no application to offences not connected with the state of emergency on account of which the ordinance was promulgated. There is nothing in the ordinance itself to support this view, it is on the contrary implied in it that it is for the executive authorities to consider and decide what offence shall be tried under it. Difficulties would obviously arise if Special Magistrates and Special Judges had to consider objections that orders passed by District Magistrates directing trial under the ordinance were illegal because the alleged offences were not connected with the state of emergency referred to in the Ordinance. Being of opinion that there is no force in any of the contentions advanced I dismiss the application. Learned counsel asked me to grant a certificate under S.205, Government of India Act,¹ while conceding that the case did not fall within the terms of that section. As the case does not involve a substantial question of law as to the interpretation of that Act or any order in council made thereunder, I am unable to grant a certificate to this effect.

R K.

Application dismissed.

¹ This is a provision enabling High Courts to give leave to appeal against their judgement to the Federal Court.

2. Salig Ram — (Applicant) v. Emperor [Iqbal Ahmad C.J., Collister and Bajpai J.J. Full Bench (12 Nov. 1942)]

AIR, Vol. 30, 1943, Allahabad, pp. 26-46

Criminal Revn Appln. No. 842 of 1942, Decided on 12th November 1942, from order of Special Judge, Jaunpur, dt 17th September 1942. . . .

S.C. Das -- for applicant.

Asstt Government Advocate -- for the Crown.

Order (27th October 1942). This is an application in revision by one Salig Ram who, along

with 30 other persons was tried by a Special Magistrate for an offence punishable under S.395, Penal Code. The offence that formed the subject of charge against the applicant was alleged to have been committed on 14th August 1942. The trial was by a Special Magistrate in pursuance of the provisions of S.10 of Ordinance No. 2 of 1942. The learned Magistrate acquitted one of the accused and convicted the remaining 30 accused. He sentenced Salig Ram to two years' rigorous imprisonment and to a fine of Rs 50 and in default of payment of fine he ordered Salig Ram to undergo six months' rigorous imprisonment. Salig Ram appealed to the Sessions Judge who dismissed the appeal holding that no appeal lay to him in view of the provisions of S.13 of the Ordinance. Salig Ram then filed the present application in revision in this Court. The decision of the Magistrate has been assailed by Mr Pyare Lal Banerji on two grounds. He has firstly contended that the Ordinance is *ultra vires* the Governor-General secondly, he has argued that even if the Ordinance is valid, it cannot apply to offences committed before 20th August 1942 the date on which the Ordinance came into force in this province. He has also argued that the decision of the Sessions Judge that no appeal lay to him is erroneous.

All the three Judges constituting the present Bench are of the opinion that there is no force in the contention that the Ordinance is *ultra vires* the Governor General. Two of the Judges constituting the present Bench are further of the opinion that offences committed even before 20th August 1942 can be tried by Special Magistrates under the Ordinance, and that the decision of the Sessions Judge that no appeal lay to him is correct. This application in revision must, therefore, fail and is dismissed. The reasons for the decision will be announced on a later date. Mr Das, who appears for Salig Ram prayed that a certificate be granted for appeal to the Federal Court in pursuance of the provisions of S.205, Government of India Act, 1935. Having heard Mr Pyare Lal Banerji at length on the first question mentioned above we are of the opinion that there is no substance in his argument. We, therefore, consider that no substantial question of law as to the interpretation of the Government of India Act or any Order in council arises in the present case. Accordingly we refuse to give a certificate as prayed for.

(The reasons were then given by their Lordships on 12th November 1942).

[*Omitted*: Judgments of the majority of the Full Bench (Chief Justice Iqbal Ahmed and Justice Collister), who said that the Ordinance 2 of 1942 was not *ultra vires*, that it could apply retrospectively and that the denial of the right of appeal was correct — Ed.]

Bajpai J. — Salig Ram is the applicant before this Court. He was tried for an offence under S.395, Penal Code, by Syed Ifikhar Hussain, a Magistrate of the first class, who has been invested by the Provincial Government with the powers of a special magistrate under ordinance No. 2 of 1942. Salig Ram was convicted and sentenced to rigorous imprisonment for two years and to a fine of Rs 50 and in default of the payment of fine to a further period of six months' rigorous imprisonment. Salig Ram appealed and his appeal was dismissed by the Additional Sessions Judge of Benares at Jaunpur on the ground that no appeal lay. Three points were taken on behalf of the applicant, (1) that the Ordinance was *ultra vires* of the Governor-General, (2) that even if the ordinance was not *ultra vires* it had no application to offences committed before 20th August 1942 when the Ordinance came into force, (3) that the learned Additional Sessions Judge was wrong in holding that no appeal lay to him against the conviction recorded by the Special Magistrate. The contention of the applicant is that this conviction and sentence mentioned above is illegal and that we should interfere in our revisional jurisdiction. It is necessary to say something about the history of Ordinance No. 2 of 1942.

On 2nd January 1942, the Governor-General made and promulgated the Ordinance in exercise of the powers conferred by S.72, Government of India Act, as set out in sch.9, Government of India Act, 1935. The preamble says that whereas an emergency has arisen which makes it necessary to provide for the setting up of Special Criminal Courts, an Ordinance is made and promulgated.

- (1) This Ordinance may be called the Special Criminal Courts Ordinance, 1942.
- (2) It extends to the whole of British India.
- (3) It shall come into force in any province only if the provincial Government, being satisfied of the existence of an emergency arising from (any disorder within the province or from) a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the official Gazette, declares it to be in force in the province, and shall cease to be in force when such notification is rescinded.

The words within brackets were inserted by the Special Criminal courts (Second Amendment) Ordinance, 1942 (Ordinance No. 42 of 1942) which came into force on 19th August 1942. Thus it was only on 19th August 1942 that it was realized by the Governor-General for the first time that a state of emergency could arise or has arisen in India by reason of internal disorder and the Provincial Governments should be given authority to declare that the Special Criminal Courts Ordinance should come into force in any particular province. By a notification published in the U.P. Gazette Extraordinary, dated 20th August 1942, Confidential Department, dated Lucknow 20th August 1942, No. 7661.C.X., the Governor of the United Provinces came to the conclusion that whereas he was satisfied that a state of emergency had arisen from disorder within the province therefore in exercise of the powers conferred by Sub-s (3) of S.1 of the Special Criminal Courts Ordinance, 1942 (Ordinance No. 2 of 1942), 'the Governor hereby declares that the said ordinance shall come into force in the United Provinces with effect from the date of publication of this notification in the official Gazette'. By another notification, the Governor of the United Provinces under S.1 of the Special Criminal Courts Ordinance, 1942 appointed all Sessions Judges, Additional Sessions Judges and Assistant Sessions Judges, as had already exercised or may hereafter have exercised powers as such for not less than two years, to be Special Judges. Under S.5 the Governor directed that the Special Judges aforesaid shall try certain offences specified in the notification. Under S.9 the Governor invested all stipendiary Magistrates of the first class in the United Provinces, who had already exercised or who may hereafter have exercised, such powers for not less than two years, with the powers of a Special Magistrate under the said ordinance to be exercised throughout the district to which they might for the time being be attached. And under S.10 the Special Magistrates aforesaid were directed to try cases in which one or more persons was or were accused of certain offences specified in the notification.

The offence in question in the present case is said to have been committed on 14th August 1942. A first information report of the offence was made the very same day and the accused was arrested on 15th August 1942. The charge sheet was submitted by the police on 30th August 1942 and the trial commenced on 31st August 1942. The first contention on behalf of the applicant is that the Special Criminal Courts Ordinance No. 2 of 1942 is *ultra vires* of the Governor General. My Lord, the Chief Justice, has given his reasons at length for holding that there is no force in this contention. As I am in general agreement with his views, I do not consider it necessary to burden my judgment with my own reason. I, however, find that

I am not in agreement either with him or with my brother Collister on the other two points raised by the applicant and I shall therefore state my reasons with all respect to my learned brethren in detail.

At the very outset, I wish to point out that the High Court has certain powers of revision over all criminal Courts within its jurisdiction under its Letters Patent as also by the code of criminal procedure. Under S.27 of the Ordinance the provisions of the Code of Criminal Procedure and of any other law for the time being in force, in so far as they may not be applicable and in so far as they are not in consistent with the provisions of the Ordinance, have been made applicable to all matters connected with, arising from or consequent upon a trial by special criminal courts constituted under this ordinance. The code of criminal procedure, therefore, has not been abrogated in its entirety but only in so far as its provisions may be inconsistent with the provisions of the ordinance. Section 26 deals with the topic of exclusion of interference of other courts, and therein it is stated that no court shall have authority to revise any proceedings of any court constituted under this ordinance save as provided in the ordinance. The High court under S.435, criminal P.C., can call for and examine the record of any proceeding before any inferior criminal court situated within the local limits of its jurisdiction for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed, and as to the regularity of any proceedings of such inferior Court, and under S.439, Criminal P.C.,¹ the High Court can pass appropriate orders. The object of conferring these powers on the High court is to give it a supervisory jurisdiction in order to correct miscarriage of justice arising out of misconception of law and thus prevent undeserved hardship to individuals.

I venture to suggest that if Special Magistrates and Special Judges are criminal Courts inferior to us, then we can call for and examine the record of their proceedings for the purpose of satisfying ourselves as to the correctness, legality or propriety of any finding, sentence or order recorded or passed by them — but subject to this that we can look at the correctness, legality or propriety of the finding, sentence or order with reference to the ordinance only. If there has been no violation of any of the provisions of the ordinance, then, however wrong or improper the sentence or order of the Special Magistrate or the Special Judge might otherwise be this Court would be powerless to interfere. As I read the section the jurisdiction of other courts which ordinarily would have jurisdiction either under the criminal procedure code or any other law is ousted only if the proceedings are valid under the ordinance and it could not have been the intention of the Legislature nor has it been so expressed, that the Special Criminal courts have been given an unfettered jurisdiction to act even in violation of the provisions of the ordinance or to pass orders under the colour of the ordinance when they have no such power.

I have assumed that the Special Magistrates and Special Judges are inferior Criminal Courts qua the High Court. It is true that Special Judges and Special Magistrates are under the direct control of the Provincial Government in as much as they have been appointed and invested with certain powers by the Provincial Government, but they are still courts contemplated by S.6, Criminal P.C.,² which speaks of courts constituted even under any law other than the criminal procedure code, and a restricted power of revision has been reserved by S.26 of the Ordinance and again in a restricted form the code of criminal procedure has been made applicable. I hold the view that if, for instance, a Special Magistrate take cognizance of an offence which under the Notification he is not authorized to take cognizance of the High Court's right of interference is not excluded. Similarly, where he offends against the provisions

of the Ordinance in any other respect the High Court can revise his order. The court must be a court constituted under the ordinance and the proceedings must be valid proceedings under the ordinance before the jurisdiction of the High Court can be ousted.

I am very loath to hold, in the absence of clear and express language, that the highest court in the province is powerless in the matter of criminal justice administered by other courts in the province — courts which under every other law not rendered entirely ineffective even for the purpose of the ordinance are inferior to the High court. The whole object of conferring revisional jurisdiction on the High court is to make it a guardian of administration of criminal justice by other courts within its jurisdiction, and so long as criminal offences are tried by any court, ordinary or special, the High court automatically gets jurisdiction to supervise their proceedings and if this jurisdiction is to be taken away, express words are necessary in a statute even in a state of emergency, and I do not find such express words of far-reaching import in S.26, more particularly when S.27 preserves in a restricted form the application of ordinary law. It may be assumed that it is open to the Governor-General to make an ordinance declaring martial law when all ordinarily constituted courts will cease to function. It may be that in the exercise of the power of making ordinance it is open to the Governor General to abrogate all law and the functions of ordinary courts and allow martial law to be administered in an area and thereby exclude the revisional jurisdiction of the High court. It may be that it is also open to the Governor-General by making an ordinance to allow ordinary courts to administer criminal law and to take away from the High court its revisional jurisdiction, but both such ordinances must contain express words and this responsibility must be taken by the Legislature, but short of this I am not prepared to hold that the powers conferred on the High court by the letters patent and the criminal procedure code have been rendered nugatory.

With these preliminary observations, I proceed to consider question 2. It is contended broadly on behalf of the Crown that nobody has a vested right in procedure and by the Ordinance nothing has been done except to regulate and alter the procedure heretofore prevalent in connexion with certain offences. This principle may be accepted, but the application of the principle presents great difficulties when questions arise as to what is a matter of mere procedure and what is a matter of substantive right—difficulties which have engaged the attention of eminent Judges in England and in India. Mere procedure can, of course, be altered, and it cannot be argued that a person who has obtained a cause of action prior to an enactment regulating procedure has a right to say that his action must be tried according to the law prevalent before the new enactment, but if an action has been instituted before the enactment of any law the action will ordinarily be regulated by the old law and it is the old law which will govern appeals, etc. Besides this, an appeal, although it is a creation of statute and although no one can say that he has a common law right of his grievance being redressed by one court, is nonetheless a matter of right if once the statute has created the right. A statute ordinarily speaks from the date from which it is specified in the Act to come into operation or from the date when it receives assent where such assent is necessary and is prospective in its operation unless it in clear terms, says that it will have retrospective effect or when such an intention can be unhesitatingly gathered, and it is only then the vested rights might be impaired, otherwise vested rights would not be affected.

The right of appeal, as I said before, is a right, similarly, the right in a criminal case to obtain bail or to apply for habeas corpus to the High Court, and if these rights have been taken away by the Ordinance then the language must be explicit or the intention must be inevitable.

In (1905) A.C. 369, their Lordships of the Privy Council were considering the effect of the Judiciary Act of 1903, and Lord Macnaghten, while delivering the judgment, observed as follows:

As regards the general principles applicable to the case there was no controversy, on the one hand, it was not disputed that if the matter in question be a matter of procedure only, the petition is well founded. On the other hand, if it be more than a matter of procedure, if it touches a right in existence at the passing of the Act, it was conceded that, in accordance with a long line of authorities extending from the time of Lord Coke to the present day, the appellants would be entitled to succeed. The Judiciary Act is not retrospective by express enactment or by necessary intendment. And therefore the only question is, was the appeal to His Majesty in Council a right vested in the appellants at the date of the passing of the Act, or was it a mere matter of procedure? It seems to their Lordships that the question does not admit of doubt. To deprive a suitor in a pending action of an appeal to a superior tribunal which belonged to him as of right is a very different thing from regulating procedure.

This authority has been quoted in numerous subsequent cases in England and in India and leaves no room for doubt that the right of appeal is a right and not merely a procedural thing. In 50 All 965 a Full Bench of this Court speaks of appeal as a right and says,

A right of appeal in a suit is governed by the law prevailing at the date of the institution of the suit, and not by the law prevailing at the date of the decision of the suit or at the date of the filing of the appeal

In 52 Mad. 361 a Full Bench of that Court held,

... that the institution of the suit carries with it the implication that all appeals then in force are preserved to it through the rest of its career, unless the Legislature has either abolished the Court to which an appeal then lay or has expressly or by necessary intendment given the Act a retrospective effect

In A.I.R. 1928 Lah. 627 a Full Bench of the Lahore High Court held as follows:

It is now authoritatively settled that the right of appeal is not a mere matter of procedure, but is a vested right which inheres in a party from the commencement of the action in the Court of first instance. If according to the law in force at the time when the action was started in the Court of first instance the ultimate decision of such Court was appealable, the right to prefer or prosecute an appeal therefrom is not affected by subsequent change of the law abolishing the appeal or modifying its forum unless it is so provided expressly in the amending statute or follows by necessary implication from its terms.

It further held:

Statute should be interpreted, if possible, so as to respect vested rights and in the absence of anything in an enactment to show that it is to have retrospective operation it cannot be so construed as to have the effect of altering the law applicable to a claim in the litigation at the time when the Act is passed.

In A.I.R. 1927 P.C. 242 their Lordships observed that in (1905) A.C. 369 it was authoritatively stated that while provisions of a statute dealing merely with matters of procedure may properly, unless that construction be textually inadmissible, have retrospective effect attributed to them, provisions which touch a right in existence at the passing of the statute are not to be applied retrospectively in the absence of express enactment or necessary intendment. Their Lordships then observed:

Provisions which, if applied retrospectively would deprive of their existing finality orders which, when the statute came into force, were final, are provisions which touch existing rights.

It is clear that this is all the more so where an order which was not final is made final by a new Act. I need not labour this point any further. I therefore pass on to the next question whether any action was pending between Salig Ram, the accused, on the one hand, and the Crown on the other, when Ordinance No. 2 of 1942, promulgated by the Governor-General was made applicable to these provinces by means of notification made by the Governor. The notification, as I said before, was made on 20th August 1942.

The offence was committed on 14th August 1942 and a first information report was made the very same day. The accused was arrested on 15th August 1942 and the police started with the investigation as provided in the Criminal Procedure Code. In a civil suit an action starts not with the accrual of the cause of action but the institution of a plaint or some similar proceeding and it is reasonable and logical to say that in a criminal case the action starts with the filing of a complaint or with the making of a report, and when, as in the present case, the accused is arrested and the machinery of law in the shape of a police investigation is started, the action has commenced, and it is not necessary that the trial with all its formalities should have commenced before a Court. Even if there were some doubt in this matter, the doubt must be solved in favour of the subject and not in favour of the Crown according to all canons of criminal jurisprudence. By the special ordinance, many vested rights which I have enumerated before were taken away, the right of appeal, the unrestricted powers of the High Court in matters of revision, the right to move superior tribunals in the matter of bail, the right to apply in habeas corpus to the High Court.

Apart from this, I cannot but take notice of the fact that by the sister ordinance No. 3 of 1942, which was also made and promulgated by the Governor-General in exercise of the powers conferred by S.72, Government of India Act, as set out in Sch.9, Government of India Act, 1935, on 2nd January 1942, penalties provided by law for the punishment of certain offences were enhanced, and although this ordinance No. 3 of 1942 did not make an innocent action criminal and punishable as a crime, it undoubtedly aggravated the crime and enhanced the punishment. By S.23 of Ordinance No. 2 of 1942, a special rule of evidence inconsistent with the Evidence Act of 1872 was enacted. Section 24 enacted a special rule of procedure for the recovery of fines inconsistent with S.386, Criminal P.C. Section 24A enacted a special provision regarding bail, and S.25 fettered to a certain extent the right of an accused in connexion with legal practitioners. These far-reaching consequences affecting rights were brought into existence by Ordinance No. 2 and Ordinance No. 3 of 1942 passed both on 2nd January 1942. I now naturally pass on the question whether there is anything in ordinance No. 2 of 1942 which in express terms makes the Ordinance applicable retrospectively or if such an intention can be necessarily gathered, and I shall confine my discussion to the case of Special Magistrates only for which provision is made in S.10 of the ordinance and the same is applicable in the case of Special Judges for which provision is made in S.5 of the Ordinance. Section 10 says that a Special Magistrate shall try such offences or classes of offences, . . . as the Provincial Government, or a servant of the crown empowered by the Provincial Government in this behalf, may, by general or special order in writing, direct.

The argument on behalf of the Crown is that the moment a Special Magistrate is directed by the proper authority to try an offence, the Special Magistrate needs must try it under the ordinance. This may be so, but the question is whether the authority concerned has the power to make such a direction under the ordinance. If what I have said in an earlier portion of my judgment is correct, the action in the case of the present accused had commenced before 20th August 1942, and unless the authority was competent to direct the trial of this particular offence

by the Special Magistrate the trial would be vitiated. If there is absence of power in the directing authority there is absence of special jurisdiction in the Magistrate or the Judge and even if the Magistrate or the Judge purports to act like a Special Magistrate or a special Judge he remains for all purposes an ordinary Magistrate and an ordinary Judge under the Criminal Procedure code and there is no difficulty in holding that all the powers of the High Court under S.345 and 339, Criminal P.C., remain intact, unfettered by any provision of the Ordinance. The trial and conviction by a Special Magistrate or a Special Judge under the Ordinance can only be protected and that too if they do not violate any of the provisions of the Ordinance if the Special Magistrate or the special judge assumes a valid jurisdiction under the ordinance, but, if for some reason, the assumption of jurisdiction is unjustified then the Special Magistrate of the Special Judge is only functioning as an ordinary Court under the Criminal Procedure code and no provision of the Ordinance comes into play and *a fortiori* the alleged bar to the revisional jurisdiction of the High Court under S.26 does not come into play.

The words in S.10 are 'shall try such offences or classes of offences'. The Crown wants me to read that these words necessarily imply the reading of certain other words, namely 'whether committed before or after the coming into operation of the Ordinance'. Words should not be read into a statute ordinarily unless the context to the scheme of the Act warrant the addition of the words. The emergency which necessitated the constitution of Special Courts in the Province was brought about by a state of disorder within the province, and to my mind acts and disorder which brought about the emergency are outside the scope of the Ordinance and the Ordinance must apply only to offences which were committed after the passing of the Ordinance, otherwise the result will be that the very acts which brought about the emergency would be caught by the Act which was passed because of those acts and the very first illegal act which along with certain other acts created the emergency would be triable under the Ordinance and not merely those acts which came into existence after the state of emergency. In other words, cause, effect and remedy should be kept distinct and not merged into one in an ordinance like this. I may make this point a little more explicit. A number of acts convinced the Governor-General on 19th August 1942 that a state of emergency had arisen in India because of internal disorder and on 20th August 1942 the Governor of this Province was similarly convinced — and of these conditions the Governor-General and the Governor alone are the sole arbiters and the Governor therefore issued a notification in exercise of the powers conferred by sub.S.(3) of S.I., Special Criminal Courts Ordinance, 1942, and to my mind the inference is obvious that henceforward people are warned that if they commit certain act of disorder they will be tried in a different manner and drastic punishments will be meted out to them. The Act, therefore, does not in express terms say that the Special Magistrate shall try offences whether committed before the passing of the Act or committed after the passing of the Act, and the necessary implication, to my mind, is that the offences committed before the Act are outside the scope of the Ordinance. If the Ordinance was intended to apply to offences committed before the notification, there was nothing easier than to say so, as was done in 2 and 3 Geo. VI, Chap. 62, Emergency powers of Defence Act of 1939, where the Act was made applicable to proceedings instituted before or after the commencement of the Act in express terms. There is the authority of the highest court in England as to the principles of construction in matters like these. In (1894) 1 Q.B. 725 Lopes L.J. observed as follows:

It is well recognized principle in the construction of statutes that they *operate only on cases and facts which come into existence after the statutes were passed*, unless a retrospective effect is clearly intended [The italics are mine].

This principle of construction is specially applicable when the enactment to which a retrospective effect is sought to be given would prejudicially affect vested rights or the legal character of past transactions.

The learned Judge was dealing with the Bankruptcy Act where the words were 'where a debtor is adjudged bankrupt'. It was urged before him that the words 'where a debtor is adjudged bankrupt' were equivalent to the words where a debtor is an adjudicated bankrupt, but the argument was repelled by the observation that if the Legislature so meant why they did not use that form. His Lordship said.

It seems to me highly improbable that the Legislature when passing a new Bankruptcy Act creating great changes in the law, and attaching wider and graver disabilities to ba bankruptcy, would impose new and penal consequences on bankruptcies already existing.

Davey L.J. at p. 740 said as follows:

The question therefore seems to me to turn on the proper construction to be put on the words where a man is adjudged bankrupt at the commencement of S.32, Bankruptcy Act, 1883. 'Now, reading those words alone, and apart from considerations arising out of the subject-matter of the section in which they occur, I should certainly understand them (according to the ordinary use of the English language) to mean, if any man shall or may hereafter be adjudged bankrupt, and unless there be some controlling context in the Act or in the section, I hold that to be meaning of the words. It has been suggested that the words may be read as meaning where a man is an adjudicated bankrupt'. The answer seems to me to be that those are not the words before us, and that the words we have to construe are grammatically different. I think words 'is adjudged' are the verb, whereas in the paraphrase suggested the word 'adjudicated' would be an adjective.

I again wish to repeat that the words are not 'offence whether committed before or after the passing of the Act', and the scheme of the Act. I have discussed that when I was considering the question about the creation of the emergency-suggests that the statute was to operate only in cases and on facts which come into existence after the statute was passed. The principle of law laid down by Lord Coleridge C.J. and Denman J. in (1891) 2 Q.B. 145 also supports my view. Lord Coleridge C.J. observed:

The question raised in this case is no doubt very capable of argument on both sides; but on the whole I think it is safer to hold that S.26, Bankruptcy Act, 1890, is not retrospective in its operation and that where a person is accused on an offence created by that Act, as applied to Debtors Act, 1869, all the ingredients of the offence must have taken place before 1st January, 1891, upon, which date the Act of 1890 came into operation, I think that the words in S.26 'shall have effect' must mean 'shall have effect from 1st January 1891'. That conclusion is supported by the view that to give a retrospective effect to the statute would be to deprive the defendant of a defence upon which, at the time the acts complained of were committed, he was entitled to rely. It seems to me a very strong thing to hold that a defence which was open to a man at the time he did the acts complained of has been taken away by the retrospective operation of a subsequent statute.

In connexion with the present case, it might be said, regard being had to the sister ordinance No. 3 of 1942, that a defence was open to the accused that he could not be sentenced to a term longer than that provided by the Penal code in respect to the offences which he had committed, and looking at ordinance No. 2 of 1942 itself he could say that he was entitled to appeal and to apply for bail or habeas corpus under the criminal procedure code and all these rights which are in the nature of defences could not be taken away by

the retrospective operation of ordinance No. 2. I have, therefore, in respectful disagreement with the opinion of my Lord the Chief Justice and my brother Collister, come to the conclusion that the offences committed before 20th August 1942 could not be directed to be tried by the special Magistrate.

The third contention on behalf of the applicant is that the learned additional Sessions Judge was in error in holding that no appeal lay to him against the conviction recorded by the Special Magistrate. This is, of course, on the assumption that the Special Magistrate could try the present accused of the offence with which he was charged. In this connexion I need not repeat what I have already said that under the provisions of SS.435 and 439, Criminal P.C.,³ this court has the power to revise the orders of Special Judge and Special Magistrates where they have acted in violation not merely of any rule enunciated in the Penal code or the Criminal Procedure Code, but where they have erred in construing or interpreting a particular provision of the Ordinance and have acted contrary to its provision. The right of appeal has been given to an accused under the Ordinance by S.13 which reads as follows:

Where a Special Magistrate passes a sentence of transportation or imprisonment for a term exceeding two years an appeal shall lie to the Special Judge having jurisdiction in the area, or, if there is no Special Judge for the area, to the High Court in a presidency town and elsewhere to the Court of Session.

The Additional Sessions Judge before whom the appeal came up for hearing in the present case was a Special Judge, and the question that I have got to decide is whether the Special Magistrate passed a sentence of transportation or of rigorous imprisonment for a term exceeding two years. Salig Ram has been convicted by the Special Magistrate under S.395. Penal Code, and sentenced to a term of rigorous imprisonment for two years and a fine of Rs 50 and in default of the payment of fine to a further term of rigorous imprisonment for six months. The question is whether the Special Magistrate in the present case has passed an appealable sentence. Am I stretching the language of S.19 at all, or in any event, am I stretching it to an extent to which a subject is not entitled as against the Crown in matters of penal law, when I say that S.13 can be read as follows after omitting unnecessary words.

Where a Special Magistrate passes a sentence which is in excess of a sentence of rigorous imprisonment of two years.

If I am right in this connexion than, to my mind, it is obvious that the learned Special Magistrate did pass a heavier sentence than the sentence of rigorous imprisonment for two years. The sentence of fine is also a sentence, and the combination of the two sentence, namely, a sentence of fine of Rs 50 and a sentence of rigorous imprisonment for two years, is a sentence in excess of what the Special Magistrate was competent to pass, if he intended, the sentence to be a non-appealable sentence. The matter becomes all the more obvious when we find that in default of the payment of fine the accused has a right not to — (and in any event there is the possibility of not being able to) pay the fine, and in that case, the needs must suffer rigorous imprisonment for another six months. The special judge was therefore, in error in holding that the sentence passed by the Special Magistrate was a non-appealable sentence, and I would, therefore, have in my revisional jurisdiction not ousted but reserved by S.26 of the Ordinance, sent back the appeal to the Special Judge for disposal on the merits and according to law, for I hold the view that even under the Ordinance the High court has the power to revise the orders of the special Courts when they act in contravention of the provisions of the Ordinance itself.

By the Court – As already ordered on 27th October, 1942, the application is dismissed.

Application dismissed.

- 1 Section 439 of the Cr. Proc. Code laid down that the High Court had powers of revision.
- 2 Section 6 of the Cr. Proc. Code described the five classes of Criminal Courts in India – Court of Sessions, Presidency Magistrates, Magistrates of First Class, Magistrates of Second Class, Magistrates of 3rd Class.
- 3 Section 435 of the Cr. Proc. Code gave the High Court the power to call for the records of inferior courts. The judge of any superior court 'may call for and examine the records of any proceeding before any inferior Criminal Court within the local limits of its or his jurisdiction . . . [to satisfy himself] as to the correctness, legality or propriety of any findings. Sentence or order recorded or passed by such inferior courts'.

3. Banwari Gope and others (Petitioners) v. Emperor [Harries C.J., Fazl Ali and Varma J.J. Full Bench (20 Nov. 1942)]

AIR, Vol. 30, 1943, Patna, pp. 18-23

Criminal Revn. Applns. Nos 638 and 640 of 1942. Decided on 20th November 1942, from order of Special Magistrate, Dinapur, D/7th September 1942 and Special Magistrate, Patna City, D/8th September 1942.

Rajeshwari Prasad and G.P. Sahi (in No. 638) and S.M. Gupta and S.C. Chakravarty (in No. 649) – for Petitioners.

Advocate-General – for the Crown.

Fazl Ali J. – These are two revision applications by certain persons who have been tried and convicted by Special Magistrates appointed under Ordinance 2 of 1942 and the point which has been urged on their behalf is that the Special Magistrate had no jurisdiction to try them inasmuch as before the Ordinance came into force the Subdivisional Officers of Dinapur and Patna city respectively had taken cognizance of the offences said to have been committed by them and the criminal proceedings against them had started under the ordinary law. Ordinance 2 of 1942 as amended by Ordinance 42 of 1942 empowers the Provincial Governments to constitute Special Courts of criminal jurisdiction on being satisfied of the existence of an emergency arising from a hostile attack on India or a country neighbouring on India or from the imminence of such an attack or from any disorder within the province. The provisions relating to the Special Magistrates, with whom alone we are concerned at present, are to be found in SS.9 to 14 of the Ordinance. These sections provide that any Presidency Magistrate or Magistrate of the first class who has exercised powers as such for a period of not less than two years may be invested by the Provincial Government with the powers of a Special Magistrate under the Ordinance and that these Magistrates shall try such offences or classes of offences or such cases or classes of cases other than offences or cases involving offences punishable under the Indian Penal Code with death, as the Provincial Government, or a servant of the Crown empowered by the Provincial Government in this

behalf, may, by general or special order in writing, direct. The Special Magistrate, after he is appointed, is to try cases which are placed before him according to the procedure laid down in S.6 and may pass any sentence authorized by law except a sentence of death or of transportation or imprisonment exceeding seven years. Where, however, he passed a sentence of transportation or imprisonment for a term exceeding two years, an appeal lies to the Special Judge having jurisdiction in the area or, if there is no Special Judge for the area, to the High Court in a presidency town and elsewhere to the Court of Session.

It appears that the Ordinance 2 of 1942 was declared to be in force in the Province of Bihar on 21st August 1942 and after the Special Courts were duly created, the District Magistrate of Patna, who was presumably the Crown Officer empowered by the Provincial Government to direct what classes of cases were to be tried by the Special Magistrates appointed under the Ordinance, first passed an order on 23rd August 1942 authorizing all the Special Magistrates in the district to try such cases as were specified in the order and then on 27 August 1942 directed certain offences answering the description to be found in S.10 of the Ordinance to be tried by them. The language of these orders was subjected to certain criticisms, but as those criticisms are of a very minor nature and will not affect the decision of the present case, I will not refer to them but proceed at once to state the relevant facts of the two cases which are before us. The petitioners in Criminal Revision No. 638 are four in number and they have been prosecuted for contravening R.56 and 35, Defence of India Act, by taking part in a procession which had been banned by the order of the District magistrate and by causing damage to the telephone line within the compound of one Mr Bashir, a Group Warden, on 13th August 1942. In regard to these offences which are said to have been committed by these petitioners on 13th August 1942, the Subdivisional Officer of Dinapur recorded the following order in the ordersheet on 14th August.

Received complaint under S.56 of the Defence of Indian Rules. Cognizance taken. The accused Banwari Goala, Jagernath Halwai, Girdhari Chamar and Janki Halwai are produced in custody of Dinapur police. They do not complain of maltreatment by the escorting party. They are committed to custody till 28th August 1942.

The next order which was recorded on 28th August 1942 is to the following effect: 'Put up before Special Magistrate on 1st September 1942.' Then comes a third order which is dated 29th August 1942 and it reads as follows:

I.O reports that the accused (1) Jagernath Halwai, (2) Banwari Gope, (3) Girdhari Chamar (4) Janki Halwai be prosecuted under S.56, D.I. Rules. Cognizance has already been taken on the previous report. Put up on 1st September 1942, before the special Magistrate.

After this date the case was sent to a Special Magistrate for disposal on 1st September 1942 and on 4th September 1942 the Magistrate in question framed a charge not only under R.56 but also under R.35 of the Defence of India Rules. On 7th September 1942, the Special Magistrate found the petitioners guilty on both the charges and sentenced them to undergo rigorous imprisonment for three years under R.35, cl. (4) but he passed no separate sentence under R.56 (4). The point which has been emphasised in this case is that the sub-divisional officer of Dinapur had, as was expressly stated in the order-sheet, taken cognizance of the case on 14th August 1942, that is to say, before ordinance 2 was brought into force in the province. The petitioner in Criminal Revision No. 640 is Lachmi Narain Tamoli who has been convicted by a Special Magistrate of an offence under S.411, Penal Code, and sentenced to

rigorous imprisonment for the twelve months. It appears that this man was arrested on 15th August 1942 on the charge that he had committed theft in respect of a cap belonging to a soldier attached to a British Regiment stationed at Patna. Five days later, that is to say, on 20th August 1942 the police submitted a charge-sheet against him and the sub-divisional officer of Patna city sent the case to Mr T. Hossain for disposal. On 21st August the sub-divisional officer finding that 'Mr Hossain's file was congested' transferred the case to another Magistrate named Mr Ghosal for disposal and on that very day Mr Ghosal summoned certain witnesses for 26 August 1942. On the latter date, one of the two prosecution witnesses was examined by Mr Ghosal and the other being absent the case was adjourned to 28th August 1942. On that very date, the Subdivisional Officer withdrew the case to his own file on the ground that the case was triable by a Special Magistrate and after proceeding with the trial as a Special Magistrate convicted and sentenced the petitioner as already stated on 8th September 1942. The petitioner there upon preferred an appeal to the Special Judge, but his appeal was summarily dismissed on the ground that no appeal lay under the Ordinance as the sentence passed by the Special Magistrate did not exceed two years. Thereafter he preferred this criminal revision. At this stage it seems necessary to refer to S.26 of the Ordinance which reads as follows.

Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Ordinance, be no appeal from any order or sentence of a Court constituted under this Ordinance and, save as aforesaid, no court shall have authority to revise such order or sentence, or to transfer any case from any such court, or to make any order under S.491 of the code or have any jurisdiction of any kind in respect of any proceedings of any such Court.

Upon this provision there can be no doubt that if the Ordinance is found to be applicable to these two cases so that the petitioners could have been properly tried under it, this court can have no jurisdiction to revise the order of conviction and sentence against which these applications are directed. The point, however, which is raised in both the cases is that the Ordinance was not applicable to these two cases and the Special magistrates by whom the petitioners have been tried had no jurisdiction to try them. The main ground which is urged in support of this contention is that the Ordinance cannot be given retrospective operation and is not applicable to those cases in which the criminal proceedings had started before it came into force.

[*Omitted: Judge's observations, citing cases and legal principles, on how far a statute could be given retrospective effect, and on various aspects of the Criminal Procedure code, including the right of appeal — Ed.*]

The next point to be decided is what power can be exercised by the High Court in these cases. It seems to me to be plain that the High Court cannot revise the order of conviction or sentence passed by the Special Magistrates concerned under SS.435 and 439, Criminal P.C., because this power of revision can be exercised only as against orders passed by Magistrates exercising jurisdiction under the code of Criminal Procedure. As the Special Magistrates derived their jurisdiction from the ordinance, they cannot be properly described as 'inferior criminal Courts' and the High court cannot revise their order. It does not however necessarily follow from this that the High court is entirely powerless in the matter. Under S 491, Criminal P.C.,¹ the High court may direct that a person illegally or improperly detained

in public or private custody within the limits of its appellate criminal jurisdiction be set at liberty. It seems obvious to me that if the ordinance under which the petitioners were tried was not applicable to their cases, then their trial was no trial at all in the eye of law and they cannot be detained in a prison, because they should be deemed to have been committed to prison without a trial and because the Magistrates who have sentenced them to imprisonment had no power to send them to prison.

These facts, in my opinion, are sufficient to attract the jurisdiction which this Court undoubtedly possesses under S.491, Criminal P.C., and this court is accordingly competent to order the petitioners to be set at liberty in exercise of such jurisdiction. It is true that S.26 provides among other things that no Court shall make any order under S.491 of the Code or have any jurisdiction of any kind in respect of any proceedings of any Special Magistrates or Special Courts constituted under this ordinance, but this prohibition applies only to those cases to which the ordinance is applicable and which can be tried under the ordinance. As the cases before us could not be tried under the ordinance, they stand outside the ordinance and S.26 or anything contained in the section does not apply to them. I would therefore direct that the petitioners in both the cases be set at liberty at once. It is hardly necessary to add that it will be open to the authorities concerned, if they are so advised, to take such action against the petitioners as the law permits.

Harries C.J. — I agree and have nothing to add.

Varma J. — I agree.

Order accordingly

1 Sect. 491 dealt with the High Court's power to issue directions of the nature of *Habeas Corpus*.

4: Police firing at Dhakiajuli (Assam)

File No. 3/61/43 – Home Poll (I)

[NAI]

In the court of the Special Magistrate (under Ordinance No. II of 1942) at Tezpur, K.E. On the complaints of A.S.I. Hiranmay Purkayastha.

R, Case No. 387 of 1942.

Emperor

vs

1. Kamala Kanta Das
2. Kalicharan Thakuria Alias Maya Kishorenath — Accd., u/s/147/353 I.P.C.
3. Gobordhan Das Alias Rupdhan Das
4. Jiban Chandra Mohanta
5. Bhaba Keot
6. Bhogram Keot Alias Deffla

7. Bhadesarar Chaudhury – Accd., u/s 147 I.P.C.

Judgment

The prosecution case briefly is as follows: on the 20.9.42 at about 2. p.m. about two thousand persons, consisting of Santi Senas or congress Volunteers and other villagers males and females, came from the east and assembled in front of the Dhakiajuli Police station with a view to trespass into the thana compound and hoist Congress flag there. Accused Kamala and absconding accused Bapuram with four others holding congress flags in their hands forcibly entered the thana compound in the first instance. S.I. Mohindhar Bora, o/c Dhakiajuly P.S., warned them several times and asked them to desist from entering into the thana compound but they did not pay heed to it. S.I., Mohindhar Bora then ordered the unarmed constables to disperse the crowd by a lathi charge but the Santi senas and others attacked the Police, accused Kamala Kanta ordered the mob to attack and arrest the Police and take charge of the thana. The crowd attacked and injured the unarmed constables, the A.S.I. and the S.I. when the latter ordered the armed constable to open fire. The armed force opened fire but the mob attacked them and snatched away their rifles and injured the Head constable and seven armed constables. As the firing was continued the mob ultimately dispersed leaving 6 dead and 6 injured persons amongst them in the thana compound. The rioters took away three rifles some ammunition and certain other properties at the time of their dispersal. As S.I. Mohindhar Bora was lying on bed with injuries on his person, an A.S.I. lodged an ejahar and took cognizance of the case. The investigation of the case was subsequently taken up by S.I. Brajabashi De.

Charge sheet u/s 147/379/353 I.P.S. was submitted against the present seven accused and 22 others including two absconding accused. Of the 27 persons placed on their trial 11 persons were discharged and 2 persons were acquitted u/s 194 I.P.C. on the prosecution withdrawing the case against them; 6 persons were discharged u/s 253 (1) Cr.P.C. for want of sufficient evidence against them. The remaining seven persons are awaiting judgment in this case.

The defence is that the processionists were peaceful that just as they entered the thana compound with flags the o/c, Dhakiajuli P.S. ordered the armed constables to open fire and after the fire was opened some members in the crowd got unruly and assaulted the police officers that the firing was premature and unnecessary and that none of the present accused assaulted any member of the police force and that none but Kamala Kanta had at all gone with the crowd. Kamala admits having gone with the processionists but denies having entered the thana compound or having assaulted S.I. Mohindhar Bora or any other police officer. Accused Kalicharan says that he had gone to Dhakiajuli hat and had nothing to do with the procession and did neither enter the thana compound nor assault A.S.I. Hiranmay Purkayastha. Accused Jiban says that on the date of occurrence he was attending the Sradh ceremony at parbatha in the house of the near relation of his, Bhedaswar says that he was too ill to go out and was at home on that day. Gobardhan says that he was never known by the name of Rupdhan and was lying ill at home on the date of occurrence. Accused Bhaba says that he had gone to Dibru-Darrang hat on that day and did not go to Dhakiajuli. Accused Bhogram says that he was at home on that day.

The prosecution has examined the complaint (P.W.1), the Officer-in-Charge of the Police Station (P.W.2) unarmed constables Chandra Kanta (P.W.4), Bhunidhar Saikia (P.W.5) Dimbeswar Koch (P.W.6), Girija Dhanuk (P.W.12), armed Head Constable Thanuram Kachari (P.W.7) three outsiders Rebat Kumat Tamuli Mauzadar (P.W.3), Surya Ram Brahmin (P.W.8)

and Prabhat Chandra Bora (P.W.11) and two medical officers, sub-Assistant Surgeons of Dhakiajuli Dispensary (P.W.13) and Assistant Surgeon of Tezpur (P.W.14) and an Assistant Sub-Inspector (P.W.9) and investigating police officer (P.W.10).

Accused Bhadreswar Jiban Mohanta, Bhaba Kanta and Gobardhan have, each of them examined one witness in support of the defence plea of alibi.

At the instance of both the prosecution and the defence I had been to the Dhakiajuli Police Station to make a local inspection and a memorandum of Local Inspector has been placed on the record.

The points for our determination are:

- (1) Whether the crowd that went to Dhakiajuli police station on the 29th September 1942 formed itself into an unlawful assembly and, if not whether some members of the said assembly used force in the furtherance of their common object.
- (2) Whether the accused were members of such an unlawful assembly.
- (3) Whether accused Kamala Kanta assaulted sub-inspector Mohidhar Arora in the execution of his duty as a public servant.
- (4) Whether accused Kali Charan assaulted Assistant Sub Inspector Hiranmay Purkayastha in the execution of his duty as a public servant.

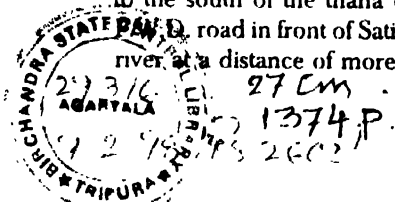
Let us proceed to discuss the evidence on the first point. My task has indeed been made very easy by the learned pleaders for the defence by their suggesting to P.W.8 in his cross examination that some members of the crowd got unruly after the order for opening fire was given and these people assaulted the police officers.

This suggestion is a clear admission of the fact that the assembly was an unlawful one. Even if the assembly were not unlawful in its inception it became unlawful as soon as its members trespassed into the thana compound and assaulted the public officers. But the assembly was unlawful from its very inception. There is overwhelming evidence to show that the assembly was headed by certain persons holding flags and that they wanted to enter into the thana compound to hoist the said flags. There is thus abundant evidence to show that the common object of the assembly which consisted of about 2000 persons was to trespass into thana compound and hoist congress flag to cause annoyance to the police officers in occupation thereof. The assembly must therefore be designated unlawful under section 141 I.P.C. Third clause as to using force the defence suggestion itself admits that force was used at a later stage. There is no doubt that force was used in prosecution of the common object of the assembly. If so every member of the assembly would be guilty of rioting in view of the provisions of section 146 I.P.C. The learned pleader for the defence who argued the case so ably, commented on the numerous discrepancies in the prosecution evidence, Discrepancies have been too numerous as to the number of persons composing the procession. The number of females, number of each row, number on the culvert of females and of males, position of police officers and constables and of the female and male processionists and on similar points. The learned Public Prosecutor in their arguments asked me to read the evidence as a whole; and reading the evidence as a whole I have no doubt in my mind that the processionists numbering about 2000 came to Dhakiajuli police station with a view to hoist Congress flag there and that some amongst the crowd assaulted the police officers and snatched away lathis from the unarmed constables and also hat, pugrees, etc. This broad fact have not been denied by the defence and I have no hesitation in coming to this conclusion on a consideration of the evidence on record. The learned pleader for the defence has admitted that P.W.8 was nearer the truth

than any other P.W. and that he was least biased in favour of the police. I propose to quote his statement about the occurrence to show that the conclusion arrived at by me in this respect is justified on the Evidence on record. He says 'I went to the thana compound and took my stand near the gate. The crowd stood quiet for sometime and then shouted 'Bandmateram'. Those who had flags in their hand – some had garlands also in their hands – came in the front and talked to Daroga. Daroga asked them not to create trouble adding that if they did so then fire would have to be opened. Then one man at the back blew a whistle immediately after the crowd forcibly entered the thana compound and surrounded the four unarmed constables in the front and caught the chhoto Daroga by his throat, the crowd then attacked the bara Daroga and threw him down. They also surrounded the armed constables, baradaroga then ordered the armed constables to open fire. The crowd had thrown down all armed constables except two who were still standing. At Daroga's orders the said two constables opened fire. at this time I was standing at a distance of about 5 cubits to the East of the thana building'. The occurrence as stated above apart from discrepancies on minor details have been broadly corroborated by every other eye witness. I have therefore no hesitation in holding that the crowd that came to the thana formed itself into an unlawful assembly and that some members thereof in prosecution of the common object of the assembly used force and as such every member thereof was guilty of rioting.

Before proceeding to discuss the evidence another point, I think I should briefly discuss the evidence on the point of justification or otherwise of the firing resorted to by the police force at the time of the occurrence, this point if not directly at issue of adjudication but nevertheless evidence was adduced on the point and was referred to at the time of the argument. Six out of the eight armed constables, 6 unarmed constables and the S.I. and the A.S.I. were all injured, some severe, some slight, three bayonets, leather pouch containing a quantity of ammunition were taken away. Lathis were snatched away. Constables pugrees, A.S.I.'s felt hat and one constable's shirt were taken away, as stated by P.W.8 all but 2 armed constables were thrown down by the mob. Whether with greater tact and courage the catastrophe could have been averted is another question, but circumstances assumed such a proportion that S.I. Mohindhar could reasonably get apprehensive that the force at his disposal would be overpowered by the mob and his order to the armed constables to open fire could not be said to have been unjustified or even premature, but it was the subsequent stage in the drama that was most pitiful, the firing resorted to by probably two constables – the other constables were almost simultaneously with the order to open fire overpowered and it is doubtful if actually any of them could open fire at all – was uncontrolled and ruthless, that the civil constables were overpowered before they could use their lathis and that the majority of the armed constables were overpowered and some of their rifles snatched away would go to show that they were not well prepared for the eventuality and that they lacked in courage. The large number of persons assembled on the road made them nervous and they were easy prey, and perhaps to some extent willing victims to the fury of the mob. Their lack of courage was more than compensated by the ruthlessness of the two constables who could not be overpowered by the mob, they fired and fired even at the back of the fleeing crowd and aimlessly and probably some one also chased the fleeing crowd by the road to some distance. A dead body was found in the Hatkhola to the south of the thana building, one was found to the south of the thana culvert and another that of a young girl near the culvert over the

road in front of Satish Biswas's shop (a dead boy was found later on near the Gandnajuli river at a distance of more than a mile from P.S.) there were injured persons picked up from



outside the thana compound; the man found dead in the hatkhola was a beggar. These facts go to prove that the firing as resorted to by the constables was indiscriminate, uncontrolled and cowardly but for this the S.I. or even O.C. Thanura could hardly be blamed. It is unnecessary to discuss the evidence on this unhappy episode resulting in the death of 11 persons further.

I propose to discuss the evidence on the next three points together.

Let me take up the case of Jiban Mohanta first he was identified by A.S.I H. Purkayastha (P.W.1) and S.I. Mohindhar Bora (P.W.2), P.W.1 saw him when 500 to 600 men entered the thana compound from the eastern side of the culvert P.W.2 saw him when 150 men entered in from the culvert at the first instance and he also saw him as some men surrounded him, the accused being in that crowd, accused name does not appear in the ejahar. P.W.S. 1 & 2 deposed against this accused in another political case sometime back when they saw him in Court P.W.1 is a cousin brother of the accused, he says that Jiban went to their village on 19.9.42 and was in his house the whole of the next day and till 4 p.m. of the day following (21.9.42) in connection with the Sraddha ceremony of his father. Prosecution evidence itself does not seem to be free from doubt and then I see no particular reason to disbelieve this P.W. I therefore hold that accused Jiban Mohanta was not a member of the unlawful assembly.

Let us than take the case of Gobordhan, P.W.1 & 2 have identified him. P.W.1 saw him with 500 to 600 men that entered the thana by the eastern side, according to P.W.1 & 2 at first about 150 men attacked them from the side of the culvert, after that about 500 to 600 men trespassed into thana compound. According to P.W.1 Gobardhan entered the thana with the first batch of 150 persons and that he was also one of those who had surrounded him. Apart from this discrepancy the most damaging part of the evidence is that P.W.1 asked constable Dimbeswar (P.W.6) as to the name of Gobordhan when entered the thana with 500 to 600 men and P.W.6 told him that his name was Rupdhan and that as such P.W.1 could know this accused but P.W.6 does neither identify this accused nor corroborate the statement of P.W.1 in this respect, then P.W. at first identified accused Jiban saying that he was Rupdhan. The name Rupdhan appears in the ejahar but in view of the circumstances disclosed in evidence it is extremely doubtful if accused Gobordhan was at all seen in the crowd either by P.W.1 or by P.W.2, a neighbour of this accused says that on the date of occurrence accused was lying ill of swollen feet, swollen face and swollen arms at his home, he also says that he never heard the accused called by anybody by the name Rupdhan. I see no particular reason to disbelieve this witness and I am sure that this accused's case is one of mistaken identity P.W.3 who knew him from before did not also see him in the crowd. I therefore, hold that accused Gobordhan was not a member of the unlawful assembly.

Let us now consider the case of Bhaba Kanta. His name does not appear in the ejahar, but he has been identified by both P.W.1 and P.W.2 P.W.1 saw this accused when struggle for rifles was proceeding. P.W.2 says that soon after Kamala and Bapuram struck him Bhaba and others also seized him. P.W.1 does not corroborate him. P.W.1 and 2 deposed in certain other political cases against this accused and had seen him there, this may also have been a case of mistaken identity. P.W.4 a co-villager of this accused, says that on the day of occurrence he went with Bhaba to Dibru-Darrang *hat* to sell rice and they returned also from there together and that they did not go to Dhakiajuli to join the procession on that day. The prosecution evidence itself is discrepant and then I see no particular reason to disbelieve the P.W. In these circumstances I am unable to hold that this accused was a member of the unlawful assembly.

I propose to take up the case of accused Bhadreswar next he has been identified by P.Ws

1, 2 and 12. Bhadreswar's plea of alibi has not been substantiated. P.W.1 did not see the accused after the first week of September 1942 and as such he cannot say about the accused's ability to walk up to Dhakiajuli on 20.9.42. There is however some discrepancy about the part taken by Bhadreswar in the statements of P.Ws 1, 2 & 12. P.W.1 saw him on the road 50 or 60 cubits to the East of the culvert. P.W.12 saw him on the culvert, but P.W.2 says that Bhadreswar also seized him after he was attacked by Kamala and Bapur, there is no corroboration of this statement. P.Ws 1 and 2 deposed against Bhadreswar in some other political case, so his name must have been known to them, his name appears in the *ejhar*. But the question remains when he was seen; P.Ws 1, 2 and 12 were together but they put Bhadreswar in widely different places. Bhadreswar is well known to P.Ws.3 and 11. P.W.11 is a relative of P.W.2 and could survey the whole of the thana compound from the place where he was standing, he says that he did not see Bhadreswar. P.W.3 who was also near P.W.2 until he was attacked also says the same thing, it appears rather improbable that he could not have seen this accused if he were either on the culvert or at the place where P.W.2 was attacked. In these circumstances a reasonable doubt arises if this accused was really recognised by the P.Ws or this was also a case of mistaken identity, whatever that may be, this accused also is entitled to the benefit of doubt.

Accused Bhogram alias Daffla has been identified by P.Ws.1 and 2. P.W.2 says that he saw the accused when he also seized him after the attack by Kamala and Bapuram P.W.1 him when the struggle for the rifle was going on. He is not named in the *ejhar*, nor has any other witness identified him, there is no evidence either that any other accused knew him from before, it is quite probable that P.W.2 saw him as the accused came to seize him and P.W.1 saw him at a later stage of the occurrence when struggle for rifle was going on. Accused says that he was at home on that day, but he has not adduced any evidence in support of his statement. I have considered the evidence on record as against this accused and I see no reason to discard it as unreliable. I therefore hold that accused Bhogram alias Duffla was a member of the unlawful assembly.

Kamala has been identified by all the eye witnesses (P.Ws.1, 2, 3, 4, 5, 6, 7, 11 and 12) except P.W.8, he was the leader of the party; he engaged himself in altercation with P.Ws.2 and 3 and it was he who ordered the crowd to attack the police force and gave signal by blowing a whistle, he with others then attacked S.I. Mohindhar Bora and struck him on the head with a lathi, the first part of this statement has been proved by all the P.Ws named above. The assault on S.I. Mohindhar Bora has been proved by P.Ws.1 and 2; P.Ws.3 and 7 speak of assault on P.W.2 by the crowd. There is no reason why P.Ws.1 and 2 should have falsely implicated accused Kamala in the matter. More than any body else P.W.2 could not have made any mistake about it, he was arguing with the accused and all on a sudden as he ordered civil constable to disperse the crowd by use of lathi this accused with others came forward and made him their first target. I have no hesitation in holding that accused Kamala was the leader of the unlawful assembly and assaulted the officer in charge of the police station o/c who was undoubtedly there to discharge his duty as a public servant by preventing the mob from entering the thana compound and in the discharge of his said duty he was assaulted by the accused. I therefore, hold that accused Kamala was a member of the unlawful assembly and had also assaulted. P.W.2 while he was engaged in the discharge of his duty as a public servant.

Accused Kali Charan says that he did not join the procession but went to Dhakiajuli hat. P.Ws.1, 2 and 12 have identified him. P.W.1 further says that this accused had caught him by the neck; P.W.1 received an injury on the neck; presumably this was caused by this accused.

I see no particular reason to doubt the identification of this accused by P.Ws.1 and 2; P.W.1 must have been able to recognise his assailant clearly, in any case I see no reason to discard his statement in this respect as unreliable. I also see no reason to discard the statement of P.W.2 so far as the presence of this accused in the crowd is concerned, P.W.12 says that this accused snatched away his lathi. I see no reason to discard his statement either. I therefore, hold that accused Kalicharan was a member of the unlawful assembly and had assaulted P.W.1 and A.S.I. of Police while engaged in discharging his duty as a public servant.

In view of the findings arrived at above I find accused Gobordhan, Jiban, Bhaba Keot and Bhadreswar not guilty u/s 147 I.P.C. and acquit them accordingly u/s 258 (1) Cr.P.C. I find accused Kamala kanta and Kali charan guilty u/s 147-353 I.P.C. and convict them accordingly. I find accused Bhogram alias Daffla guilty u/s 147 I.P.C. and convict him accordingly. As to sentences, Kamala deserves severe punishment. He was the leader of the crowd and was mainly responsible for egging the crowd to resort to violence and thus inductly for the loss of so many lives. I, therefore, sentence him to undergo R.I. for a period of one year and six months u/s 117 I.P.C. and to undergo R.I. for a period of one year u/s 353 I.P.C. The sentences to run concurrently with each other and with the sentence he is already undergoing. I sentence accused Kali Charan Thukuria alias Mayakishore Nath to undergo R.I. for a period of six months u/s 117 I.P.C. and to undergo R.I. for a period of three months u/s 353 I.P.C. the sentences to run concurrently with each other and with the sentence he is already undergoing. I sentence accused Bhogram Keot alias Daffla to undergo R.I. for a period of four months u/s 147 I.P.C.

S.K. Das,
Special Magistrate,
Tezpur.
29.3.42.

5: Prabhakar Kesheo Tare and others (Applicants) v. Emperor [Pollock and Vivian Bose J.J. (8 Dec. 1942)]

AIR, Vol. 30, 1943, Nagpur, pp. 26-36

Misc. Criminal Cases Nos 57, 69 and 70 of 1942, Decided on 8th December 1942.

D.T. Mangalmurti; N.T. Mangalmurti and K.B. Tara — for Applicants

J. Sen — Advocate General — for the Crown

Vivian Bose J. —

[*Omitted*: Introductory s' tements about the position taken by both sides on the right of Habeas Corpus, stressing the importance attached to it in British and Indian legal practice — Ed.].

Now, as I have said, this is one of the most fundamental rights known to the Constitution and the most highly prized, but it does yield place to another matter even more fundamental — the saety of the realm. No one doubts the right of the Legislature, or of such power as takes its place in emergencies, or when it is not functioning, to modify the rights of the subject

or even to suspend or take them away altogether, and this in times of peace. No less than war, for under the Constitution the Legislature is supreme. But, be it observed, it is the Legislature which is supreme, not the Executive and so, before the Executive can claim the power to override those rights, it must show that the Legislature has empowered it to do so, and under the constitution the Legislature can only act in particular ways. All empowering must therefore be done properly and formally, deliberately, in the manner laid down by the Constitution. The Executive cannot suddenly step in and claim the right to wield absolute and arbitrary power-not even in war time. For, as Lord Atkin said in his dissenting judgment in (1941) 3 All. E.R. 338 (Lords Macmillan and Wright agreeing as to this in principle — there was no difference of opinion on this point).

In this country, amidst the clash of arms, the laws are not silent. They may be changed, but they speak the same language in war as in peace, it has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting, that the judges are no respecters of persons and stand between the subject and any attempted encroachments on his liberty by the Executive, alert to see that any coercive action is justified in law.

I may add that these principles of liberty to which Lord Atkin refers apply as much to India as elsewhere, and it is as relevant for a judge in India to take judicial notice, in a matter of this kind, of repeated allied pledges that justice will be done after the war and that those of the enemy found guilty of excesses and abuse of power will be brought to book and tried and punished, as it was for the learned law Lords in (1941) 3 All. E.R. 338 to take judicial notice of the existence of Quislings and Fifth Columnists, of Lord Atkin to take notice of the principles of liberty for which on high authority we are now fighting. I gather that the necessities of war will not be a sufficient excuse or an abuse of power committed by the enemy. I cannot think it is intended that they should be here. Therefore the Courts must enquire into such allegations if they are made. All these considerations weighed heavily with the learned law Lords in (1941) 3 All. E.R. 338 when they construed provisions similar in many respects to the one we have here — in fact the learned Advocate-General contended that this is the only case really in point and that it is decisive. In my opinion, such considerations are as relevant and should weigh as heavily with us here. It is my view that the rights conferred under S.491 subsist and will continue to subsist until either the section is expressly, or by necessary and express implication, abrogated, or the rights are expressly taken away.

The learned Advocate-General admitted that the Section has not been expressly repealed, but he contended that the effect of the Defence of India Act and the rules made under it was to render it nugatory, and he contended that in consequence the applicants had no right of audience. I refuse to accept this contention. I refuse to accept a similar argument in I.L.R. (1940) Nag. 1 at page 11 when an abuse of power by the Congress Government of the Province was in question. The Earl of Birkenhead refused to accept something similar in (1923) A.C. 603 at p. 610 and in (1928) A.C. 459 at page 467 Lord Hailsham said that would be a 'startling result'. Such fundamental rights, safeguarded under the constitution with elaborate and anxious care and upheld time and again by the highest tribunals of the realm in language of the utmost vigour, cannot be swept away by implication or removed by some sweeping generality. No one doubts the right and the power of the proper authority to remove, but the removal must be express and unmistakable, and this applies whatever Government be in power, and whether the country is at peace or at war.

I do not for a moment deny that the canons of construction are not the same in respect of war measures as those passed in times of peace: see Lords Macmillan and Wright in (1941) 3 All. E.R. 338 and 6 Halsbury's Laws of England, Hailsham Edition, p. 627. Far greater latitude is allowed to the executive, and presumption in favour of the liberty of the subject are weakened — indeed, that is expressly provided for in S.3 Defence of India Act, but those canons and those rights do not disappear altogether. In my opinion, some limit must be placed upon claims to the arbitrary exercise of absolute power in matter connected with the restraint of a man's liberty, and unless such powers are unmistakably conferred either expressly or by necessary implication — and by 'Necessary' I mean when no other construction is reasonably possible — they must be taken, at the very least, to be subject to the right of a person detained to come before his Court under S.491 and complain of that detention and demand that he be either dealt with according to law or be set at liberty; and this notwithstanding that the Act we are considering is a war measure. In my opinion, Lord Macmillan's observations in (1941) 3 All. E.R. 338 apply here. He said:

It is important to have in mind that the regulation in question is a war measure. This is not to say that the Courts ought to adopt in war time canons of construction different from those they follow in peace time. The fact that the nation is at war is no justification for any relaxation of the vigilance of the Courts in seeing that the law is duly observed, especially in a matter so fundamental as the liberty of the subject. Rather the contrary.

This, in my opinion, is particularly so when the very arbitrary powers, for which claim is made here are exercisable not only by the Provincial Government or by some responsible Minister, or Member of Council, or Adviser, but by any District Magistrates in this province and indeed, so far as the Act is concerned, by 'any officer or authority' not subordinate to the Central Government whom that Provincial Government may choose to appoint: see S.2 (5). It must be remembered that in (1941) 8 All. E.R. 338 the learned law Lords, who answered Lord Atkin's powerful dissenting judgement, were careful to give prominence to the fact that one of the reasons which prompted them to decide as they did was that, in the case of the measure before them, the person exercising the wide powers, which were upheld, was a Minister of the Crown, responsible to a removable executive and to Parliament, a Secretary of State himself.

[Omitted: Quotations from the Judgments of Lords Wright, Maugham and Macmillan in the case *Liversidge vs. Anderson* — Ed.]

I look in vain for any similar safeguard in the Indian measure—quite the contrary. These applicants have not even been allowed to see counsel. They have not been allowed to have legal advice. They have not been allowed to come before us in person, nor have they been given any reasons for their detention. There is also another powerful reason which weighed in (1941) 3 All. E.R. 338 but which is absent here. I quote Lord Wright:

But if the sense of the country was outraged by the system or practice of making detention orders, or indeed of any particular order, it could make itself sufficiently felt in the Press and in Parliament to put an end to any abuse and Parliament can always amend the Regulation.

That does not apply here. Indeed I gather that the applicants before us were arrested, in the first instance, for their temerity in trying to exercise those very rights of protest which the law Lords in (1941) 3 All. E.R. 338 regarded as the residuary safeguard. Now what are the provisions on which the learned Advocate-General relies for his contention that S.491 has

been abrogated by implication? First of all, he turns to S.2, Defence of India Act, which provides as follows.

The Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war, or for maintaining supplies and services essential to the life of the community.

Stopping there I find it difficult to see how any of those objects can be endangered just because some obscure person in a district jail is allowed legal advice and is permitted to place his case properly before this Court under S.491. I am not concerned to see whether these persons are desirable or not. The law is no respecter of persons, and, as Scrutton L.J. said in (1923) 92 L.J.K.B. 797 (I quoted him in I.L.R. (1940) Nag. 1 at p. 10 also) it is one of the tests of belief (and I may add of sincerity), to apply principles to cases in which one has no sympathy at all. As I see it, this refusal is an abuse of power. I cannot believe that things have reached such a pass that the safety of the realm is likely to be endangered if these persons, meritorious or otherwise, are allowed a little legal advice. Things cannot be as bad as that; and yet, though the learned Advocate-General did not say so, that is the logical conclusion to which one is driven if this section is relied on in justification of the order of refusal. But that aside S.2 in my opinion, in nowise abrogates, S.491, either expressly or impliedly, nor indeed does the Crown really contend that. What the learned advocate-General says is that S.2 must be read along with R. 26 (f). The rule is as follows:

- (1) . . . the Provincial Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner pre-judicial to the defence of British India, the public safety, the maintenance of public order (His Majesty's relations with foreign powers of Indian States, the maintenance of peaceful conditions in tribal areas), or the efficient prosecution of the war it is necessary so to do, may make an order.
- (f) Imposing upon him such restrictions as may be specified in the order in respect of his . . . communication with other person . . .

This sweeping provision is said to abrogate S.491 by implication. It is admitted that the rule does not say that the person detained may not apply but it is said that Government can say that he may not come before this Court to present his case in person and that he may not hold any communication with any person whom he desires should represent him. That, in my opinion, results in what Lord Wright called a 'travesty of a trial' -- not indeed a regular trial as ordinarily understood but of a trial by this Court of the issues which arise under the *habeas corpus* provision of the Criminal Procedure Code. I have no hesitation in rejecting such a contention. If the right to apply is not taken away, and I think I have made it plain that it is not, then the Executive cannot arbitrarily nullify the exercise of that right by making the proceedings in this Court a farce, and, in my opinion, that is what occurs if it be held that the man may neither come in person nor instruct another who is prepared and free to come, that he may not even receive proper and adequate legal advice. In my opinion, not only does S.2 read with R.26 (f), not abrogate S.491 but quite the contrary, and quite apart from general rules of constitution, S.14, Defence of India Act, lays down: that:

Save as otherwise expressly provided by or under the Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction.

Admittedly the jurisdiction of the Court under S.491 has not been expressly taken away. Therefore, it remains in force, and so long as this jurisdiction is there, the judges must, in my opinion, be alert to see that the full effect of that jurisdiction is not whittled away or rendered ineffective by such orders as these. There is also another point against the contention of the Crown. Even R.26 (f) does not give a *carte blanche* right of refusal. It says that the provincial Government has to be satisfied in respect of each particular person. But what is the position here? The joint Secretary to Government sends a memorandum to the Registrar stating that security prisoners as a class are not entitled to interviews except on the written orders of Government and copies of the relevant orders are enclosed. But these orders are general orders. They have no reference to the particular persons before us, and they were passed before these persons were even arrested. Government has nowhere stated that the safety of the realm, or any one of the other matters referred to in R.26, will be imperilled if the applicants are permitted to interview their legal advisers. As I have said, this attempt to keep these applicants away from this Court under the guise of these rules, is an abuse of power and warrants intervention by this Court. In my opinion, the Provincial Government should be directed to permit interviews with legal advisers on such terms and subject to such conditions as it thinks desirable. I must not be understood as saying that anybody and everybody can be permitted to interview these persons nor do I mean to imply that no restrictions can be imposed. Of course, Government can say that A, B and C may not interview the detainees or even X, Y and Z. But to say that no legal adviser can be found in the whole of this province or indeed in the whole of India, fit to be given the right of an interview for this purpose would be an abuse of power under the present state of the law and should not, in my opinion, be permitted.

It is relevant to point out here, as Lord Atkin pointed out in (1941) 3 All. E.R. 338, that it is difficult to see how the trial of a *habeas corpus* petition can present greater difficulties than the trial of a spy or of a traitor for treason. Also, it seems anomalous that while spies and traitors can be allowed, and are allowed, all reasonable facilities for placing their cases fully before the Courts, particularly in the shape of interviews with counsel, those against whom no charge is preferred are told on the one hand, as, in my opinion, the law tells them, that their right to apply in *habeas corpus* has not been taken away and still subsists, and on the other that they will nevertheless be refused every facility which tends to make that right a living reality if they try to exercise it. I can see the regrettable necessity for detaining and segregating persons who hamper the war effort or endanger public safety. I can see the desirability of arming the executive with weapons which necessitate the utmost secrecy. I can fully understand, as I believe the decision in (1941) All. E.R. 338 to be, that Government is not bound to disclose reasons for an arrest and detention under these special powers. But even when all that is accepted, there is in my opinion still left a residue into which the Courts can and must enquire; and that enquiry cannot be frustrated by executive claims to wield absolute and arbitrary power in this way.

That brings me to the next point. It was urged on behalf of the Crown that there would be no point in allowing the applicants to present their case in the ordinary way because in the result they must fail in any event. I gather the implication was that S.491 confers a discretionary power which the Courts can exercise or not as they choose, very much as in revision, and that no Court would accept a petition for hearing if it is clear on the face of it that it cannot succeed. I cannot agree. The right conferred by S.491 is a right which it is intended that the subject should be free to exercise without let or hindrance. It is just as much

a right as a right of appeal, nay much more so because it is the most fundamental right known to the constitution bar one, and in my opinion, the Courts are bound to hear the petitioner fully and fairly and bound to see that he is given proper opportunities of placing his case before the Court freely and unhampered. It may be that he will lose in the end but the Court cannot decide that until he has been heard. Under the British law, the practice of condemning a man unheard (unless he has been afforded the opportunity to appear), or of deciding an issue behind his back is so repugnant and repellant to be characterized by the highest tribunals in the realm as opposed to 'natural justice' and as amounting to a 'denial of justice'. See. A.I.R. 1936 P.C. 242 at pp. 246 and 196 I.C. 692 at p. 693. To use the language of their Lordships in another connexion, this amounts to 'an invasion of liberty and a denial of his just rights as a citizen, see 18 C.W.N. 98 at p. 103.

But to examine this contention more closely. Must the applicants necessarily fail, that is to say, is there nothing left into which the Courts can enquire? The learned Advocate – General, relving on (1941) 3 All. E.R. 338 says No. He says it is enough for the Crown to produce the order of detention. Thereafter, there is nothing left for the Courts to do but to dismiss the petition. Again I do not agree. I hesitate to enter upon this ground in the absence of the other side (in my opinion the other side is not really here), and so I do not intend to give a final opinion. I will only venture upon a tentative one. As I understand (1941) 3 All. E.R. 338 the House of Lord's do not hold that the jurisdiction of the Courts is wholly barred and that there is nothing left for them to investigate. It is true they hold that a lot is cut away and that very little is left but I understand them to hold that there is a residue and that residue must be investigated when the issue is raised.

[*Omitted: The development of this point by the judge with quotations from the judgments in Livesidge v Anderson, and his detailed analysis of section 16 of the Defence of India Act – Ed.*]

My conclusions are that (1) S.491, Criminal P.C., has not been abrogated in any respect, (2) that any person aggrieved has a right to apply to the High Court and that he has a right to be heard; (3) that though the Provincial Government is entitled to take all proper precautions in the matter of granting interviews, even to legal advisers, it has no power to shut these detained persons off altogether from reasonable and proper legal advice; (4) that the Provincial Government has no power to prevent such issues as I have indicated from being tried in this Court in the ordinary way, if they are raised, subject of course to such reasonable safeguards as the Provincial Government may desire to have observed, that is to say, the trial, despite all safeguards, must be according to what the Privy Council call canons of natural justice, or according 'to the fundamental rules of practice necessary for the due protection of persons and the safe administration of criminal justice', or, I would observe, of any justice; (5) that in so far as these applicants have been refused access to all legal advice there has been an abuse of power, (6) that the jurisdiction of the Courts is not wholly ousted by the Defence of India Act and that there remains a residue of matter into which the Courts can and must enquire; (7) that it is doubtful whether Farquhar has the power to make these orders of detention – that, in my opinion, required further consideration before us. *The Order I would therefore in this case is that the Provincial Government be directed to afford these detained persons all reasonable facilities for obtaining such legal advice as they desire, subject to such safeguards as may reasonably be necessary; that the applicants should then be permitted to place their grievances before the Court in petitions properly and legally drawn up; and that they should be allowed, subject*

again to such safeguards as may seem reasonably necessary, to press these petitions in the usual way, if not personally, at least through counsel in whom they have reasonable confidence. I observe that the applicants cannot insist on seeing counsel A, B or C any more than Government can say that only X shall be allowed. There must be reasonableness on both sides.

[*Omitted:* The Survey of the facts of the case by Justice Pollock. Justice Pollock continues – Ed.]

I agree with much though not with all what my learned brother has said and with his conclusion that a person detained under the rules has a right to app'ly to the High Court under S.491, Criminal P.C., challenging the validity of the order of detention on the ground that the person passing the order had no authority to pass it and on the ground that he was not in fact satisfied that it was necessary to pass such an order and acted in bad faith. If the person passing the order had authority to pass it and was in fact so satisfied, then this Court cannot go into the grounds on which he was satisfied and the order cannot be called in question in this Court. It is therefore necessary, in my opinion, that the persons detained should be granted access to legal advice so that their cases may be properly represented in this Court.

Order accordingly.

R.K.

6: Viceroy to the Governor of Bihar (extracts) (case of Ainsworth)

Ianlithgow Collection
[NAI – Acc. No. 2190]

New Delhi, December 18th 1942.

To
Stewart, Governor of Bihar

Thanks for your letter¹ dated 8th December No. 892 G.B. about the Ainsworth case

In the light of the facts now elicited there is evidently all the more reason for caution in holding that Ainsworth himself took any part in, or even had knowledge of the injuries that caused the death of Kailaspa. Singh.

. . . Further enquiry seems necessary . . . as the enquiry by the local Magistrate did not succeed in establishing a case against anyone . . . suggests departmental enquiry. . . . We must accept that if the Departmental enquiry did not result in any criminal proceedings, we might be accused of having used such an expedient to hush up the case. On the other had, it might help materially in preventing the police from following false traits or vexing innocent persons (including possibly Ainsworth himself); and if it were established that the death was really caused by the treatment given to the deceased by the British troops who were present, the

matter could be dealt with by a military court and not by the ordinary civil courts. I should welcome your view.

It is too soon to discuss the question of Ainsworth's transfer to the North-West Frontier Province.

Yours Sincerely
Linlithgow.

1 Not printed.

7 Governor of Bihar to the Viceroy (case of Ainsworth)

Linlithgow Collection
[NAI - Acc. No. 2385]

From, H.E. Sir Thomas Stewart, K.C.S.I., K.C.I.E., Governor of Bihar.

Camp, January 4th 1943

[125/25-(a)-G.G.-42].

[Secret.]
No 1-G.B

My dear Lord Linlithgow,

I have given my further anxious consideration to the Ainsworth case in the light of the observations made in Your Excellency's letter of the 18th December.¹ In view of the importance and complexity of the issues raised by this most unfortunate affair, I thought it proper, to obtain (informally) legal advice. The result confirms Your Excellency's view that the magisterial enquiry held by the local Magistrate, Mr Ahsan, does not establish a case against anybody under section 302 I.P.C. (murder) or under section 304 I.P.C. (culpable homicide not amounting to murder) in as much as it appears to disclose neither intention nor knowledge nor likelihood that the injuries caused would result in Kailashpati Singh's death. On the other hand it does establish a strong *prima facie* case against Ainsworth and some of his men under section 330 I.P.C. (voluntarily causing hurt for the purpose of extorting information which might lead to the commission of an offence) and probably under section 331.149 I.P.C. as well. So far as Ainsworth is personally concerned, I am advised that, if he were prosecuted under section 330 I.P.C., the case would almost certainly end in conviction, having regard to the statement made by himself before the Magistrate.

2. I enclose a copy of the relevant portion of the report submitted to the District Magistrate by Mr Ahsan. It is not I think, necessary to trouble Your Excellency with copies of the statements of all the witness examined in the course of this enquiry, but a copy of Ainsworth's own statement is enclosed. It will be seen that he admits having given 'strokes to Kailash with

a thin stick on the buttocks', and it is evident that the beating of the other men was done under his orders. The evidence of the Mounted Military Policemen fully confirms this, and I do not for a moment believe that Ainsworth's sense of honour or pride would permit him to resile from his original statement in the course of a trial. In the eyes of the law an offence under section 330 is a very serious one. It is triable only by a Court of Sessions and is punishable with anything up to seven years imprisonment.

3. The immediate question with which we are faced therefore is not so much whether a regular police investigation might not bring to light certain facts which are not at present on record officially, or whether it would establish against any particular person a *prima facie* case of having caused the fatal injuries to Kailashpati Singh. Rather, we are apparently confronted with the fact that a regular police investigation — or even a further judicial enquiry — would inevitably lead to Ainsworth and some of his men being placed in the dock on a lesser, but still very serious, criminal charge.

4. After full consideration I am convinced that (on the facts as we at present know them) every effort should be made to prevent this from happening. Ainsworth may have acted foolishly, or worse. But he undoubtedly believed that he was doing his duty as he saw it and that he was acting in the best interests of Government. I am now more than ever convinced that his prosecution would have a disastrous effect on the morale, not only on the whole of the police force in Bihar but also on Government Servants in other services as well.

5. Whether or not we can prevent a criminal prosecution appears, however, to be open to considerable doubt. At first sight section 197 Cr. P.C. read with section 271 (2) (b) of the Government of India Act, appears to afford some protection to Ainsworth himself (but not to his men). I am advised, however, that the words 'while acting or purporting to act in the discharge of his official duty' do not, according to a number of judicial rulings, bear the meaning which the ordinary layman might attach to them. It has been held, for example, that a public servant's official duty does not permit him to do anything in the nature of causing hurt to persons confined by him lawfully or under pretext of law, and that he cannot claim to have so acted under colour of his office. My attention has been drawn in particular to a case (*Gonapathy Goundan vs. Emperor*, reported in A.I.R., 1932, Madras (24), where a village Magistrate had held in confinement certain persons whom he had suspected of having committed murder and had tortured them in order to extort a confession. He was charged with committing an offence under section 330 (voluntarily causing hurt to extort a confession), section 343 (wrongful confinement for three or more days) and Section 348 (wrongful confinement to extort a confession). It was held in that case that sanction under Section 197 Cr. P.C. was necessary to prosecute the Magistrate under sections 345 and 348 but not under Section 330.

6. The position then is that, even if Government do not set the law in motion, it may be set in motion, by somebody else. This could be done in a variety of ways. For example, an aggrieved party or someone acting on his behalf may move the High Court to exercise its revisional jurisdiction in the matter of the magisterial enquiry which has already been held under section 176 of the Cr. P.C. If this were done, there seems to be little doubt, in view of the definite finding of the Magistrate who conducted that enquiry, that the High Court would at least direct the District Magistrate to proceed further in the matter, with the inevitable result that cognizance would eventually have to be taken. Again, apart from any action that the High Court might direct, it will always remain open to any person considering himself aggrieved, or to someone acting on his behalf, to institute criminal proceedings against Ainsworth and his men by lodging a complaint before a Magistrate in the usual way or by

lodging an F.I.R. before the police. So far there has been no sign that anybody proposes to do this, but it may well be that they are waiting until they consider that circumstances are more favourable to the prosecution of such a case than they are now. Delay in the institution of proceedings is normally a serious handicap against their success, but in this case the magisterial enquiry is on record and there is no getting over it.

7. If criminal proceedings were in fact instituted in one way or another, the Provincial Government might of course hold that they could not go on as against Ainsworth without their sanction under Section 179 Cr. P.C., but this dictum would probably be challenged in the High Court and might well be overruled there. In any case Section 179 gives no protection to the subordinate policemen concerned and their prosecution would be almost as damaging to morale as that of Ainsworth himself.

8. In short, I am driven to the conclusion that there is no way in which we can be certain of preventing the ventilation of this affair in the criminal courts except by an Act of Indemnity which is framed in sufficiently wide terms to cover the facts of the case. I would ask Your Excellency to bear this in mind in considering the general question whether such an act is or is not necessary. I do not for a moment suggest that Ainsworth's case by itself could possibly justify such an Act. But we have no assurance-particularly if a successful prosecution were brought against him and or his men-that it would not be followed by others. And it would almost certainly be impossible to invoke Section 179 Cr. P.C. to protect (e.g.) an officer who was accused of burning houses.

9. Meanwhile, an Act of Indemnity, apart, if Your Excellency is in agreement with the view that the law should not be set in motion by Government in this case, it remains to decide whether we should do anything at all or should proceed departmentally. I am in favour of the latter. In my opinion we are not justified in passing the whole matter over without notice. I would also accept Your Excellency's view that, if a departmental enquiry revealed with sufficient definiteness the identity of the person responsible for causing the *fatal injuries*, it would be necessary to re-examine the propriety of criminal proceedings against such person. In the first instance, however, I would propose to direct the Inspector-General of Police himself to hold a departmental enquiry into the whole incident. I should prefer at this stage not to draw up formal departmental 'proceedings' with definite charges. This might be necessary later on if the result of the enquiry showed that some punishment more serious than that of 'censure' was called for.

10. I need not say that, if any action at all is to be taken, there should be as little further delay as possible. I should therefore be very grateful if Your Excellency would inform me whether you are in agreement with the course proposed.

Yours Sincerely,

T.A. Stewart

P.S.V.

[Marginal Note - Ed] *This is a most unfortunate position. I shall be glad to have H.M. Home's advice.*

L - 7.1.43

Enclosure 1

District Magistrate

As ordered I have held an enquiry into the cause of the death of prisoner Kailashpati Singh

and also regarding the injuries on the persons of the some of the demonstrators who were arrested on 28th September 1942 for shouting slogans in the office, asking people not to pay Government revenue and 'Government Raj' had ended, &c.

In all 31 witnesses have been examined. I shall first discuss the case of deceased Kailashpati Singh.

Before discussing the evidence I may submit that on that date 3 batches of demonstrators were arrested in the Court Compound. Four of them, namely, Baleshwar Nath, Bishwanath, Gulabchand Lal and the deceased Kailashpati Singh were arrested by the M.M.P.'s² Sawars at about 1 o'clock.

Another batch of 8 persons was arrested in the Court Veranda under my orders by the S.P. of Arrah Mofasil. These were Ramjee, Kesho Pd. Singh and Chandraman Singh little before 4 o'clock, the third batch including Ramesan, Ramraj and Narsing Narain Singh was arrested by the S.P. and his men.

So far as the assault on the deceased Kailashpati Singh is concerned 17 witnesses including the S.P. (witness No. 1), the A.S.P. (witness No. 2), Civil Surgeon (witness No. 20) and the second Medical Officer (witness No. 21) of the Sadr Hospital, 4 constables (witness Nos 5 to 18) on duty at the court premises, the Officer In charge, town P.S. (witness No. 5) and 3 demonstrators (witness Nos 22, 23 and 25) who were arrested with him besides M.M.P.'s Sawars (witness Nos 3, 4, 10, 11 and 12) and junior S.I., Lakshmi Narain Singh, who held post (witness No. 31) have been examined.

It appears from the evidence given before me that the 4 demonstrators Baleshwar, Bishwanath, Gulabchand and Kailashpati Singh were shouting slogans against payment of revenue and other anti-Government slogans near the Treasury at about 1 o'clock. They were pushed out by some of the constables on duty towards the Ramna side.

As these men persisted in their attempt to shout slogans and to distribute leaflets, they were arrested by driver Abdul Karim of the M.M.P. and his companions Abdul Gafoor Sawar No. 3 and Mohanmmad Nazir Khan M.M.P.'s recruit who took them to the A.S.P. informed the S.P. and obtained permission from him to question these persons as to where they had got the leaflets from. As in spite of all persuasion and inducement they proved stubborn and on their refusal to disclose their sources the A.S.P. ordered that they be given strokes with stick on their buttocks. The deceased Kailashpati Singh on receiving about a dozen strokes disclosed that these leaflets were given to him by Raghubans Narain Singh of Pipra. This led to a raid on the house of Raghubans Narain Singh and a Duplicator Machine was discovered, the blocks of which were identical with the prints on the leaflets found in the possession of Kailashpati and his companions.

The A.S.P. has admitted that he gave strokes to Kailashpati Singh on the buttock with a thick stick and he is unable to say which of the M.M.P. Sawar assaulted which of the prisoner but he is definite that the blows were given on the buttocks only.

The driver Abdul Karim and other M.M.P. Sawars admitted having assaulted the prisoners under the orders of the A.S.P. but all of them have stated that they gave the strokes on the buttocks only. They have denied having given any blow on any other part of their body. Karim has admitted that the old man had sat down on the way and that he slapped him on his neck.

The 4 constables on duty in the court premises have all denied any knowledge of assault on them. Only 1 of them Deomun Singh (witness No. 16, stated that he saw the M.M.P. men taking away the 4 demonstrators. The 3 prisoners who have survived stated that they were

taken to military Camp (A.S.P.'s bungalow) and were assaulted with sticks, with boots and slaps by the M.M.P. men and some white men (Goras). They are unable to say how and who assaulted the deceased. One of them Gulabchand Lal has made exaggerated statement of assault regarding branding with hot iron and kicking on his testicles by the A.S.P. but this has not been proved by the medical evidence. The officer in charge and the jail doctor found the deceased in an unconscious state when he was brought to the thana in the police bus and as his condition was very low, on the advice of the jail doctor the deceased was sent to the Sadr Hospital. He was brought to the thana at about 3.30 p.m. The deceased was sent to the Hospital some time after 4 p.m. but when he reached there he was found dead by the second Medical Officer in charge at about 5 p.m. when he was sent to the morgue for *post mortem* examination. Junior S.L. Lachminarain Pd., held inquest on the dead body. The Civil Surgeon held *post mortem* examination on the dead body of Kailashpati Singh at 9 a.m. next morning and found on the dead body contusion with ecchymosis with fracture of the third rib on the left side of the chest 1 X 3/4 caused by the thrust with the end of *lathi*, contusion with ecchymosis 3 X 4 on the right flank with fracture of the ninth and tenth rib caused by a first blow and contusion with fracture of 2 metacarpal bones caused by some hard blunt substance. There were about 11 marks of *lathi* blows on the buttocks from 5 X to 1 in length (largest). The injuries were recent ones.

According to doctor death was due to syncope from shock as the result of multiple injuries received. The Civil Surgeon further states that the man was otherwise healthy, excepting that the pleura on both side was adherent to the lungs.

It will appear here that it has been admitted by the A.S.P. and M.M.P. men, that the deceased and his companions were assaulted with sticks at the bungalow of the A.S.P. under his orders, but they have all denied that the deceased or his companions were given blows on any other part of their bodies. But the prisoners have themselves stated that they were beaten by sticks, dantas, boots and slaps.

The Civil Surgeon found injuries on the buttock of the deceased which were very much swollen and discoloured bluish black. There was much extravasation of blood besides contusions on the left side caused by end of a *lathi* and contusions with fracture on the left flank with fracture of the rib caused by kick.

The reason given by the Civil Surgeon for his opinion is that the injuries on the left side were circular which could be produced by a *lathi* thrust while that on the right flank had irregular marks 3 X 4 which show that they could have been inflicted by kicks with booted-foot.

The only conclusion one can therefore arrive at is that the deceased received these injuries with sticks in the manner described by the Civil Surgeon while he was in the custody of M.M.P. probably at the A.S.P.'s bungalow although it is not possible to say which particular man was responsible for these injuries for there were 15 M.M.P.'s Sawars and recruits and the deceased's companions are themselves unable to say how and at whose hands the deceased received these injuries.

There can be no doubt that his death was due to shock and syncope which were the result of these injuries.

S.K. Ahsan,

Sadr Sub-divisional Officer, Arrah.

1st October 1942.

Enclosure 2

Witness No. 2 – Mr T.M. Ainsworth on S.A.

On 28th September 1942 at about 1.30 p.m. one Abdul Karim driver, M.M.P. Sawar No. 3, Abdul Ghafar Khan, and Mohammed Nasir Khan No. 198 brought four men to me at my bungalow. They were dressed in Khaddar, had Congress Flag and were garlanded with flowers. Karim and Ghafoor gave me the information that as they were returning from the bazar they saw these four men shouting slogans 'Government Raj Nash Ho', and other slogans and were distributing leaflets and the two districts police *lathi* constables drove them out of the Court but when they got towards the Ramna side, the constables left them and that they were still shouting their slogans and throwing leaflets about. So the M.M.P. men chased them across the Ramna and after a brief scuffle arrested all four of them and brought them to me. I informed the S.P. by phone and he instructed me to try to find out where the leaflets came from. I questioned them and they answered they came from Senapathi. I asked who the Senapathi was and they said 'Mahatma Gandhi'. They refused to give the real name of the men who had handed over the leaflets. In order to frighten them into doing so I took one man 50 yards behind some trees and fired a pistol shot into the air and came back and told the others he was dead. They still refused to speak. Then one by one they were beaten with thin sticks on the buttocks. One Kailashpati after a dozen strokes on the buttocks confessed that the leaflets had been given to them by Raghubans Narain Singh of Village Pipra. Then they were all taken to the Police Station and F.I.R. recorded. Later that evening I and M.M.P. raided Raghubans' house and recovered 'duplicating machine' and various papers and accessories. The block of the machine was identical with the leaflets recovered from Kailashpati Singh's party. Raghubans escaped.

I gave strokes to Kailash with a thin stick on the buttock. There were a number of M.M.P. men present and I am unable to say which of them beat him. They beat him on the buttock only. Kailash was an old man about 55 years. He might have received injuries on the other parts while being hustled out of Court or while there was a scuffle in which he received blows.

The S.P. did not give me any order except to find out where the leaflets came from.

S.K. Ahsan,

Sub-divisional Officer.

30th September 1942.

There were about a dozen or 15 M.M.P.s present when Kailashpati and his companion were beaten including Abdul Karim and Ghafoor.

S.K. Ahsan,

Sub-divisional Officer,

T.M. Ainsworth, I.P.,

Assistant Superintendent, Police.

30th September 1942.

1. Doc. 6.
2. Mounted Military Police.

7-A: Governor of Bihar to the Viceroy (case of Ainsworth)

Linlithgow Collection
[NAI - Acc. No. 2385]

From, H.E. Sir Thomas Stewart, K.C.S.I., K.C.I.E., Governor of Bihar.

(125-42. G.G. -42.)
No. 2.G.B.

January 4th 1943.

My dear Lord Linlithgow,

I write in continuation of my letter of the 27th December¹ on the subject of an Act of Indemnity. I have since been in communication with Hallett who I understand is addressing Your Excellency separately. Hallett and I are in agreement that some form of indemnity is necessary. It may be true, as was argued in Council, that there have been very few instances of redress being sought in court against Government officers for acts done in the course of the rebellion. It is however important to remember that most of those who are likely to seek to victimize our officers are at present in jail and that whatever present circumstances may be, a Damoclean sword is suspended over the heads of the Services. I would particularly invite Your Excellency's attention to my letter of today's date² on the Ainsworth case, for it illustrates the extreme difficulty rather, the impossibility - of affording adequate protection by any other means to officers who had recourse to extra-legal action in suppressing the recent disturbances.

2 Like Hallett I should prefer a Central Act on the lines of the Draft ordinance enclosed with Your Excellency's letter of the 23rd December¹ and, if it would facilitate the acceptance of such an Act by Council, I would agree to jettison the 'prospective effect' idea. Indeed, although I realise the force of Maxwell's arguments,³ I am myself in considerable doubt as to the justification for giving prospective effect to an Act of Indemnity. It savours too much of the blank cheque.

3 As between a Governor's Act and an attenuated Central enactment even with a provision for trial by Selected Courts I strongly favour the former. It would be inevitable that in a selected Court as much as in the ordinary courts the question of 'good faith' would cause us great difficulty. The same principles would be applied in either case. Moreover the setting up of Selected Courts would lay us open, however unjustly, to the criticism that we were packing our tribunals in order to pervert justice in the interests of our officers. I am very sensible of the shortcomings of a Governor's Act and I recognise that it would arouse much hostility and criticism. But, as Your Excellency observes, it would serve at any rate as a moratorium and, given a new section 270-A in appropriate terms before the resumption of Ministerial Government, I consider that we should have done all that is reasonably possible for the Services.

1. If Governor's Acts have to be passed it is desirable that they should be in identical terms. I propose therefore to attempt a Draft on the same lines as the Home Department Ordinance and to send it to Hallett for acceptance or criticism. When we have arrived at an agreed formula, I shall submit it for Your Excellency's consideration. In the meantime I have in mind 2 possible emendations of the Draft Ordinance. The first is the substitution of 'the Governor in his discretion' for the 'provincial Government' as the authority competent to grant

previous sanction under Clause 4. (In practice this change would of course only be of consequence if the present Section 93 administration gave way to a Ministerial Government while the Act still remained in force. Should this development occur, it would acquire great importance). The second modification which I should like, if possible to introduce is the addition of a rider to the effect that, if any question arises whether previous sanction under Clause 4 is or is not necessary, the decision of the Government in his discretion shall be final. Even though no mention is made in Clause 4 of 'good faith' or 'reasonable belief', the judicial rulings mentioned in my letter about Ainsworth indicate how precarious a business it may be to leave the Courts to decide whether in fact an act was or was not done, or purporting to be done, 'for the purpose of maintaining or restoring order'.

Yours sincerely,

T.A. Stewart.

1 Not printed.

2 Doc. 7.

3 Not printed

8: The Viceroy to the Governor of Bihar (case of Ainsworth)

Linlithgow Collection

[NAI - Acc. No. 2385]

To, H.E. Sir Thomas Stewart, K.C.S.I., K.C.I.E., Governor of Bihar.

[125 (25-A).G.G.-42.]

*The Viceroy's House New Delhi,
January 16th, 1943.*

[Confidential]

My dear Stewart,

Many thanks for your secret letter of 4th January,¹ No. 1 (G.B., about the Ainsworth case. As I said in my interim reply to you, the position is an unfortunate one, and it has taken me some little time to consider here the new information which you have been kind enough to let me have.

2. I now write to say that in the light of your careful examination of the position, for which I am grateful, I agree with your proposal that the minor case (i.e., the beating of the deceased on the buttocks) should be dealt with by way of a departmental enquiry on the understanding that if the enquiry throws further light on responsibility for the fatal injuries that case will be followed up properly. I think it is clear that your own feeling is that, apart from the fatal injuries, the minor case should not be tried in Court and that it should be covered by any Act of Indemnity, and I accept your view on that point.

3. I hope to be writing to you shortly in the light of your own views, and Hallett's about the Act of Indemnity issue generally, and I will not enter into greater detail on the subject

now Let me however say that I note the suggestion made in the last paragraph of your letter under reply and the reasons for which you recommend provision of this nature: and while I am advised that on a reasonable interpretation of the words there is far less danger of a Court intervening on the point whether an act was done 'for the purpose of maintaining or restoring order' than there is under Section 197, Criminal Procedure Code, there is nothing to be lost by closing all possible loopholes.

4. Reverting to the specific case of Mr Ainsworth, if the departmental enquiry reveals no more than that he was responsible for the minor beating I think that, in the light of the advice I have received here, departmental reprimand and perhaps transfer to another Province would sufficiently meet the case considering all the circumstances in which the action took place.

Yours Sincerely,

Linlithgow

1 Doc 7

9: Governor of Bihar to the Viceroy (case of Ainsworth)

Linlithgow Collection

[NAI - Acc. No. 2385]

From, H.E. Sir Thomas Stewart, K.C.S.I., K.C.I.E., Governor of Bihar.

(125-42-G.G.-42)

January 25th 1943.

(Confidential)

No. 77-G.B.

My dear Lord Linlithgow,

In paragraph 3 of your letter dated the 16th January¹ (which dealt primarily with the Ainsworth case) Your Excellency mentioned that you hoped to be writing shortly about the proposed Indemnity legislation. This letter may therefore cross one from you; but, in case Your Excellency has not already written, I felt that it may be of some help to let you know at the earliest possible moment how far Hallett and I have progressed in our discussion of this subject. I am therefore forwarding for Your Excellency's information copies of the letters² that have passed between us, viz.:

My No. 3-G.B., dated the 4th January 1943.³

My No. 45-G.B., dated the 11th January 1943,⁴ and its enclosure.

Hallett's letter dated the 21st January 1943.⁵

2. You will see from this correspondence that we have reached a large measure of agreement. In fact, I would say that there is no difference of opinion at all as to what is the ideal objective, for I entirely accept Hallett's view that Central Government Servants (including soldiers) should, if possible, be covered by the indemnity. But it still seems to me that there

may be some difficulty in securing this by means of provincial legislation-and particularly by means of provincial legislation which does not make the Central Government (rather than the Governor in his discretion, or even the Governor-General) the sanctioning authority so far as their own servants are concerned. But I very readily fall in with Hallett's suggestion that these questions should be put before Your Excellency for your advice and decision.

3. As I see it, the specific questions for consideration are as follows:

- (a) Having regard to section 271 (or indeed to any other Section) of the Constitution Act, is there any objection on the ground of *vires* or constitutional propriety to clause 4 as drafted in the Bill enclosed with my letter of the 11th January to Hallett?⁶ (As it stands, that clause purports to make the Governor in his discretion the sanctioning authority in respect of all Government Servants, including servants of the Central Government and it also makes him the deciding authority if any question arises as to whether previous sanction is or is not necessary.
- (b) If it be held that clause 4 as drafted is open to objection; would that objection be removed by the substitution of (i) the Central Government or (ii) the Governor-General for the Governor in his discretion as the sanctioning and deciding authority respectively in sub-clauses (a) and (b) of clause 4 so far as servants of the Central Government are concerned?
- (c) Whether or not the Central Government or the Governor-General were substituted for the Governor in his discretion in the manner contemplated in (b) above, would it be either necessary or proper for the Provincial Governments concerned to make an official reference to the Central Government with a view to obtain their executive concurrence before proceeding with legislation which thus affected Government Servants under their control? If so, would such a reference be likely to cause embarrassment?
- (d) If Your Excellency's conclusion is that the scope of the Bill must be confined to servants of the Provincial Government, do you accept the amendment proposed in paragraph 5 of my letter to Hallett?
- (e) Is the draft Bill otherwise in order?
- (f) Does Your Excellency agree that it should not be circulated to elicit public opinion?

4. When these questions have been resolved and the terms of the Bill settled, I would propose to reserve it formally for Your Excellency's consideration. Meanwhile Hallett and I will discuss the terms of the explanatory statement which would be published alongwith the Act.

5. One other minor point occurs to me, which it may be just worthwhile to raise at this stage. If it is decided that the Governor-General is to be the statutory authority to accord previous sanction to proceedings against Central Government Servants and to decide whether such previous sanction is or is not necessary, through what channel should his orders on these points be sought? Presumably the Secretary to the Government (not the Governor) of the United Provinces/Bihar would address an official letter to Your Excellency's (Public) Secretary?

6. I am sending a copy of this letter to Hallett.

Yours sincerely,

T.A. Stewart

1. Doc. 8.

2, 3, 4, 5 & 6. Not printed.

10: In reg. Dondapati Ellappa and others (Appellants) Mockett J. (29 Jan. 1943)

AIR, Vol. 30, 1943, Madras, pp. 454–66

Criminal appeal No. 650 of 1942, decided on 29th January 1943, against order of Special Judge, Chittoor Division, in ordinance Case No. 2 of 1942.

V.T. Rangaswami Ayyangar and A.B. Viswanatha Ayyar for accused.

Public prosecutor – for the Crown.

Judgment - The appellants were convicted before Mr W.O. Newsam sitting at Chittoor as a Special Judge under Ordinance 2 of 1942. They were charged with various offences under the Defence of India Rules. In short, they were charged with sabotage of the railways by removing rails and fish-plates on the permanent way. I am not concerned in any way with the facts. They were convicted and sentenced each to five years' rigorous imprisonment except in the case of accused 4 who was sentenced to five years' simple imprisonment. They have appealed against their conviction to this High Court and the public prosecutor takes the point that no appeal lies. I am quite satisfied that the point is a good one.

[*Omitted*: Judge summarizes the clauses of the Ordinance as he understood them]

The marginal note to that clause is 'Exclusion of interference of other Courts'. Rao Bahadur V.T. Rangaswami Iyengar has argued that in spite of these provisions, it cannot be said that the right of appeal from a Special Judge has been expressly taken away, that the right of appeal being precious for the liberty of the subject cannot be taken away by implication and that whatever the framers of the Ordinance may have intended, they have in fact not achieved their purpose of preventing an appeal from a conviction by a Special Judge being heard by the High Court in the ordinary manner, under the Criminal Procedure Code. As this is a matter of considerable importance, I listened for some time and with all attention to Mr Rangaswami Iyengar's arguments. But I have not the slightest doubt that it is as clear as it can possibly be that Ordinance 2 of 1942 expressly deprives a person convicted before a Special Judge of the right of appeal in the ordinary way. The necessary meaning of the wording of cl. 8 must be that the right of appeal is abrogated and that only in certain cases can convictions be reconsidered at all and that too not by the High Court as such but by a person designated by the provincial Government, namely, the High Court Judge sitting under the provisions of the Ordinance.

But cl. 26 makes any argument by inference unnecessary, because that clause expresses comprehensively and as clearly as is possible the intention of the Ordinance to exclude every form of appeal by any person convicted under this Ordinance unless such appeal is expressly provided for and examples of those are to be found in cl. 13, appeal from the Special Magistrate – and cl. 19, appeal from a Summary Court. There is no appeal from a special Judge. Instead, the provisions with regard to review are provided cl. 8 and then only in certain cases. In this particular case, the sentence being less than seven years, it will be seen that the provisions of cl. 8 are not applicable for the purpose of review by the Judge chosen for that purpose by

the provincial Government. I am told that there is no previous decision on this point. That may well be because the provisions of the Code and the Ordinance are so clear that no one has thought of arguing otherwise. In the result I hold that no appeal lies which disposes of what is now before me purporting to be an appeal.

Order accordingly.

C.R.K./R.K.

11: Official Noting by the Additional Secretary, GOI – (dt 29.1.1943)

File 44/6/43 – Home Poll (I)

[NAI]

Subject: Treatment of persons detained without trial in connection with the Congress movement.

In a letter of August 2nd¹ laying down the plan of campaign against the Congress, we asked provincial Governments to arrest under D.R. 26 all individuals whom they considered competent and likely to attempt to organize and launch a mass movement. We informed the Bombay Government that Gandhi and the Members of the working Committee should be allowed no newspapers, letters or interviews or any other form of communication with the outside world, for at least the first month of their detention; and we recommended that all other provincial Governments should adopt a similar procedure with regard to all important leaders and organizers who might be arrested within their jurisdiction. The action was to be regarded as preventive in character.

2. On August 20th we relaxed these orders, so far as Gandhi and the working Committee were concerned, by allowing them to see certain newspapers and to correspond with the members of their families on domestic matters. This relaxation was communicated to Provincial Governments and we believe that they have all followed suit to this extent.

3. It subsequently came to our notice that certain Provincial Governments were making further relaxations in the rules regulating interviews, and the question, therefore, arose whether we should lay down a uniform policy and, if so, what it should be. On December 11th we asked for the considered views of all Provincial Governments in the matter.

4. While no Provincial Government has challenged the desirability of uniformity, and the C.P. Government has specifically asked for it, the replies to our letter of December 11th show that variations of practice have arisen. Four Provincial Governments, including three Ministerial Governments, namely Bihar, Bengal Orissa, and Assam, have relaxed the orders to a greater or less extent in the matter of interviews. Sind, which was perhaps the least affected Province, originally proposed to do so, but has agreed to fall into line with the majority. The remaining six Provinces – Madras, Bombay, U.P., Punjab, Central Provinces and N.W.F.P. – are all strongly in favour of maintaining the present orders forbidding interviews and allowing no correspondence except with members of the family on domestic matters. Security prisoners (*i.e.* persons detained without trial under D.R. 26) are ordinarily allowed to have one interview

per fortnight and to write four and receive eight letters per week if in Class I, while those in Class II are allowed to have one interview per month and to write two and receive four letters per week. All interviews and correspondence are censored but there is no particular restriction on the classes of person whom they may see or write to or from whom they may receive letters. An ordinary *convicted* prisoner placed in the lowest class is allowed one interview per 2 months and may also write and receive one letter per 2 months. Convicted prisoners in higher classes have increased privileges in these respects. The Government of India have in the past exercised a certain degree of control over the Provincial treatment of security prisoners in matters of principle, but have allowed considerable discretion to the Provinces in matters of detail.

5. The Home Department consider that there can be no question of allowing any further relaxation at present in the case of Gandhi and the Members of the Working Committee. They also consider it difficult to discriminate between security prisoners and prescribe one treatment for the more important and a different, and a more generous treatment for the less important. It follows, therefore, that there can be no question of recommending any relaxation in the rules to those provinces which desire to keep the existing restrictions in force. The main difficulty is with regard to those provinces which have already permitted some relaxation. Their reasons for doing so, at any rate so far as the three Ministerial Provinces are concerned, are probably based on the fear of popular criticism, while the Bihar Government contends that denial of interviews constitutes a 'grievance', the removal of which makes jail administration easier. This Government also points out the real difficulty of denying to persons detained without trial the privileges which are allowed even to convicted criminals. (It appears that the Punjab Government does not allow interviews to persons convicted in connection with the Congress movement, as well as to those detained without trial; but there is no evidence that any other Provincial Government has gone so far as this).

6. Considering the grounds on which denial of interviews was originally recommended and the present state of the movement, which can no longer be called a mass movement, the Home Department are inclined to think that a certain degree of discretion must be allowed to Provinces, especially Ministerial Provinces, provided that the results of their action cannot be shown to be dangerous. We must recognize the fact that the withdrawal of privileges already enjoyed may lead to difficulties such as hunger - strikes, and also that it is not easy to deprive some security prisoners of privileges which are allowed to others. We may express the view, therefore, that, since letters to relatives are already allowed, interviews with such relatives would do no more harm except on the assumption that the jail administration is slack and the interviews would not be properly supervised. While we should have no objection to this degree of relaxation in any province which wished to adopt it, we should suggest to all the four provinces which now permit interviews the importance of regulating such interviews on the same lines as letters, i.e. restricting them to members of the prisoner's family. So far as Bihar and Bengal are concerned, we might go further and suggest that the latitude already allowed has, in fact, been misused; that escapes of prisoners have taken place; and that the behaviour of their security prisoners points to the need for tightening up jail discipline and would, therefore, provide strong grounds for withdrawing some or all of the concessions already allowed.

7. A further aspect of this matter is the question of the numbers and classes of persons who have been detained without trial in connection with the movement. The Provincial returns gave the figure at over 11,000 on December 1st; and there are some grounds for thinking that

too free a use may have been made of D.R. 26 for the detention of persons who would hardly come within the category of important leaders and organizers referred to in our letter of August 2nd. This, however, is a different and a wider problem; and it is proposed to take it up separately.

8. The case is submitted to H.E. for orders whether the line of action proposed in para 6 may be approved.

R. Tottenham.
29.1.43.

P.S.V

1. Not printed -- (the letter dt 2.8.42).

12 The Viceroy to the Governor of Bihar (case of Ainsworth)

Unlithgow Collection
[NAI - Acc. No. 2385]

To, H.E. Mr T.G. Rutherford, C.S.I., C.I.E., Governor of Bihar.

*The Viceroy's House, New Delhi,
February 4th, 1943.*

[125 (25-A)-G.G.-42].
[Confidential].

My dear Rutherford,

You will have seen the papers about this unfortunate case of Mr Ainsworth ending with Stewarts' confidential letter to me of 28th January, No. 82-G.B.¹ I agree entirely that the new facts therein disclosed give the case a difficult turn, and I am glad to see that definite instructions have already been given to the Commissioner of the Division to hold an enquiry. It goes without saying of course that until we know the results of that enquiry, it is difficult to know what situation may arise. But I am a little surprised, as clearly Stewart was, that we should not have heard earlier of the complaint made to the Sub-Divisional Magistrate on the 7th October; while the particulars given by Stewart are not sufficient to enable me to judge exactly what the situation is. It is not clear for instance whether the complaint is one of causing the death of Kailashpati Singh or relates only to the beating. In any case I am advised that under the provisions of section 197 of the Criminal procedure Code it does not appear that the Court could have taken cognizance of the complaint in the absence of sanction, and it is not apparent whether the present stage is that the Magistrate has refused to receive the complaint without sanction or that the complainant has formally applied to the Bihar Government for sanction under section 197. Stewart seemed to be doubtful how far the case was covered by section 197. I am advised on this that section does not *prima facie* extend to Mounted Military Police who could only be protected by an Act of Indemnity, but that Ainsworth should be

protected under the terms of the section since any offence which he is alleged to have committed was certainly committed 'while acting or purporting to act in the discharge of his official duty' viz., the duty of arresting and examining Kailashpati Singh and committing him to custody. I agree however with Stewart that it will be desirable not only from Ainsworth's point of view but also from that of the Mounted Military Police to get the Act of Indemnity passed before further proceedings develop. I have just had the Secretary of State's concurrence in our going ahead on a provincial basis with the Act of Indemnity; and I shall be writing to you separately on that matter.

Yours Sincerely,

Linlithgow.

1 Not printed

13: Note by the Viceroy — Treatment of security prisoners¹

File No. 44/6/42 — Home Poll (I)

[NAI]

I approve generally the policy proposal in para 6 above.² But I think its application should in some regard be postponed until we are 'out of the wood' and there remain no real risk of any widespread recrudescence of this mischief. We are at war, the rebellion was the most formidable uprising since that 1857 [*sic*]. We shall be well advised to take no risks.

2. I agree that provinces must be left with some discretion, though the virtues of uniformity are patent. Thus I recognise that it may be unwise in certain circumstances to withdraw privileges already granted. That above practice can be tightened up without undue likelihood of trouble, I think Provinces should be encouraged to do so. I have, I must admit, very slight confidence in the way in which, in many jails, interviews are supervised. Nor can there be any doubt that visitors offer a ready opportunity for the conveyance of clandestine communications into and out of jails.

3. I continue to be anxious about the position in BIHAR and we have no cause to feel much confidence in the conditions obtaining in the jails of the province. I judge, therefore, that Bihar should be encouraged to tighten up practices and jail discipline. About Bengal, I am for a variety of reasons less uneasy. But, as Sir R. Tottenham observes above, we know that there also jail discipline is not up to the mark. If therefore we can persuade the Bengal Ministry to withdraw certain concessions already allowed, it would be well to do so, and jail discipline should evidently be stiffened up.

L[linlithgow.]

4.2.43.

1 This document has also been included in Chapter I-B (Doc. 16) The letter issued on the basis of these notes is in Chapter I-B — Doc. 19 — Ed

2 See Doc. 11 para 6

14: Governor of Bihar to the Viceroy (case of Ainsworth)

Linlithgow Collection
[NAI - Acc. No. 2385]

February 12th, 1943.

From, H.E. Mr T.G. Rutherford, C.S.I., C.I.E.,
Government of Bihar.

(125-25-A.G.G.42.)

(Confidential)

No. 113-G.B.

My dear Lord Linlithgow,

I have written separately on the general subject of the proposed Indemnity legislation. This letter relates to the particular case of Ainsworth and is in reply to your Excellency's letter of the 4th February.¹

2. Stewart spoke to me about this matter before he left and of the astonishment with which he had learnt only a few days previously that a private complaint had in fact been lodged against Ainsworth as long ago as the 7th October 1942. The facts appear to be as follows. The brother of the deceased man, Kailashpati Singh, filed a petition before the District Magistrate, Arrah (M.S. Rao, I.C.S.), on the 5th October. This petition, which was not in the form of a regular criminal complaint and bore no court-fee stamp (but in a charge of murder no stamp is necessary), alleged that his brother had been beaten to death by four sowars under the orders of Ainsworth and that these men were therefore guilty of murder; and the petitioner went on to pray that in the interest of justice the District Magistrate would hold an enquiry into the matter. On the 6th October this petition was simply endorsed by the District Magistrate to the Sadr Sub-Divisional Officer. On the 7th October the Sub-Divisional Officer examined the petitioner on solemn affirmation and recorded his statement in the form in which such statements are ordinarily recorded when a regular criminal complaint has been lodged. He then passed an order on a Magisterial order-sheet to the effect that he had examined the 'complainant' on solemn affirmation, that a magisterial enquiry had already been held into the matter (here he was clearly alluding to the enquiry under Section 176, Criminal Procedure Code), and that the case should be put up on a date about a fortnight ahead. When that date came, he recorded another order to the effect that the complainant was present, and that the case should be put up again when orders had been passed on the magisterial enquiry report. The order-sheet contains an order to take on file under any Section of the I.P.C. and no case number has been given. This may of course be a clerk's omission and I have given instructions to ascertain unobtrusively whether it has been entered in the Complaint Register. There the matter stands. Apparently the District Magistrate and the Sub-Divisional Officer were of the opinion that, as the report of the magisterial enquiry was already before Government, it was unnecessary for them to bring to anybody's notice the fact that this petition had been filed

and that certain action had been taken on it. Stewart visited Arrah early in December and, I understand, made particular enquiries about this case both from the District Magistrate and from the Superintendent of police. But by that time M.S. Rao had been transferred and his successor (D.H. Crofton) had never been told about the complaint. Nor did the Superintendent of police know anything about it, although the Sub-Divisional Officer had given a direction (which apparently was never carried out) that copy of the complaint and the original order passed by him thereon should be sent to the Superintendent of police. Ainsworth himself was in complete ignorance of this development until a couple of weeks ago. Meanwhile, the complainant has made no further move in the matter, and I am given to understand that there is reason to believe that he may not be anxious to go on with a regular prosecution. (One of his near relations is said to be a Sub-Inspector of Police in this province.) Both he and the deceased were according to his petition formerly in the Rajput Infantry. We shall be in a better position to decide how to deal with the complaint (it comes to active life before the Indemnity legislation has gone through) when I have found out whether the Magistrate has actually got the case on his file.

3. Your Excellency states that you have been advised that the court could not have taken cognizance of this complaint (as against Ainsworth himself) in the absence of the sanction of the provincial Government under Section 197, and that any offence which Ainsworth is alleged to have committed was certainly committed 'while acting or purporting to act in the discharge of his official duty'. As soon as Stewart heard about that complaint, he felt that he should take the precaution of obtaining the formal advice of the Legal Remembrancer here on this point. I enclose a copy of the minute recorded by the Legal Remembrancer (S.K. Das' who as Your Excellency will remember, is also Secretary to Government in the Jails Department), and you will see from this that he takes a directly contrary view. If it comes to a pinch, I shall not hesitate to disregard his advice and to act on the advice which Your Excellency has received. But, as you point out, Section 197 does not help the mounted Military Policemen, and we certainly do not want the case to proceed against them while invoking the provisions of Section 197 in Ainsworth's favour.

4. The Commissioner has got down to the enquiry which Stewart ordered him to make, and I have impressed on him that it should be pushed through as quickly as possible. Meanwhile he has raised the question (which might turn out to be one of no little importance) whether a criminal court would hereafter have the right to call for the record of his enquiry and whether the complainant in any criminal case which might be instituted against Ainsworth or his subordinates would be entitled to obtain copies of the statements made by persons (including the 'accused' persons themselves) in the course of the enquiry. The advice which I obtained on this question indicates that there is at least considerable doubt whether either the proceeding or the statements could be withheld. I have therefore given instructions that the Commissioner should be told to make full notes only of all the statements made to him both of witnesses and accused. No statements would be signed. He would make use of the notes in preparing his report to Government, and would then destroy them in much the same way as an investigating police officer destroys his notes after writing up a case diary. The Commissioner's actual report to Government would, I think, be a confidential State document which would be absolutely protected by section 123 of the Indian Evidence Act.

5. I shall keep Your Excellency informed of further developments. I should however like to take this opportunity of expressing complete agreement with Stewart's view that we should spare no effort to prevent this distressing affair from being ventilated in the criminal court,

and that the only way in which we can be perfectly sure of preventing this from happening is to get the Act of Indemnity on the Statute Book at the earliest possible moment.

Yours Sincerely,

T.G. Rutherford.

(Enclosure)

The point on which my advice is sought in this case is whether sanction under section 197, Cr. P.C., is necessary in this case. The facts of the case have been given in the report of the S.D.O., dated 1st October 1942,² at pages 2-6c. I would not repeat those facts. The offence, if any, was committed on 28th September 1942. This is after the relevant date as explained in Sub-section (3) of the Section 270 of the Government of India Act, 1935. Therefore, the protection provided under Section 270 of the Government of India Act, 1935, is not available. Section 270 of the Government of India Act, 1935, applies to acts committed before the relevant date.

2. Then comes the question of Section 197, Cr. P.C. As far as M.M.P. Sowars are concerned, I take it they are not public servants who cannot be removed from office 'Save by or with the sanction of the Provincial Government or some higher authority'. I believe they can be removed from office by an authority subordinate to the Provincial Government, and without the sanction of the Provincial Government. If that be so, no sanction for their prosecution under section 197, Cr. P.C., is necessary. As to Mr Ainsworth, he is no doubt a public servant who is not movable from his office save by or with the sanction of the Provincial Government *or some higher authority*. The words italicized are important. Therefore, Mr Ainsworth comes within the category of public servants described in section 197, Cr. P.C. The question, however, is whether the offence alleged to have been committed by him was committed *while acting or purporting to act in the discharge of his official duty*. The words italicized above are taken from the section itself and are very important. These words have given rise to various decisions in different High Courts in India all of which are not uniform. I need not invite attention to the different cases on the subject which have been referred to at pages 554-558 of Mitra's Cr. P.C. (9th edition). The question was recently considered in the Federal Court in the case of Hori Ram Singh v. Emperor (A.I.R. 1939 F.C. 43). I am quoting below the following extract from the leading judgment of Varadachariar J.:

The reported decisions on the application of S 197, Cr. P.C. are not by any means uniform. In most of them, the actual conclusion will probably be found to be unexceptionable, in view of the facts of each case; but, in some, the test has been laid down in terms which it is difficult to accept as exhaustive or correct. Much the same may be said even of decisions pronounced in England. On the language of similar statutory provisions; see observation in (1851) 11 C.P. 827. It does not seem to me necessary to review in detail the decisions given under Section 197, Cr. P.C., which may roughly be classified as falling into three groups, so far so they attempted to state something in the nature of a test. In one group of cases, it is insisted that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it; of 33.I.C. 648, O Mad. 754, A.I.R. 1929 Cal. A.I.R. 1935, Rang. 263 and A.I.R. 1939, Bom. 63. In another group more stress has been laid on the circumstance that the official character or status of the accused gave him the opportunity to commit the offence. It seems to me that the first is the correct view. In the third group of cases, stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed: see 52 Mad. 602 at p. 605, quoting from Mitra's Commentary on the Cr. P.C., The use of the expression 'while acting', &c., in section 197

Cr. P.C. (particularly its introduction by way of amendment in 1923), has been held to lend some support to this view. While I do not wish to ignore the significance of the time factor, it does not seem to me right to make it the test. To take an illustration suggested in the course of the argument, if a medical officer, while on duty in the hospital, is alleged to have committed rape on one of the patients or to have stolen a jewel from the patients' person, it is difficult to believe that it was the intention of the Legislature that he could not be prosecuted for such offences except with the previous sanction of the local Government.

The extract given above shows the view of the Federal Court is regarding the interpretation of Section 197, Cr. P.C. The test which the Federal Court applies is that there must be something in the nature of the act complained of that attaches it to the official character of the person doing it. In this particular case the allegation is that Mr Ainsworth and the M.M.P. Sowars beat a person who had been arrested for committing a certain offence in order to get some information from him. The offence is, in my opinion, clearly beyond the official character of the person doing it. Mr Ainsworth does not claim that he had any authority to beat the person or that he was empowered to do so during investigation of the case. There is a very similar Madras case which is referred to in the Federal Court judgment at page 570 the report cited above (A.L.R. 1932 Mad. 214). In that case, a Village Magistrate held in confinement certain persons who were suspected to have committed a murder, and also tortured them in order to extort a confession from them. The Magistrate was charged for committing offences under sections 330, 343 and 348, I.R.C. Wallace J. held that sanction to prosecute the Magistrate under sections 343 and 348 was required under section 197, Cr. P.C., but not for prosecuting him under section 330. The present case is, I think, similar to the Madras case referred to above. On Mr Ainsworth's own statement he was guilty of an offence under section 330, I.P.C., if not of a graver offence. Following the Madras case and the Federal Court case which has approved the Madras case, I think no sanction is necessary for the prosecution of Mr Ainsworth for the offence which he committed by beating the man. The beating was not an act which Mr Ainsworth committed while acting or purporting to act in the discharge of his official duty. The evidence of Mr Verma (the Superintendent of police) clearly shows that Mr Ainsworth was under no duty to beat the man to get the required information.

3. I must, however, say that the question whether a person committed an act while acting or purporting to act in the discharge of his official duty is a question of fact and must be determined in the circumstances of each particular case. The proper procedure in such a case is for the aggrieved party (i.e. the complainant in this case) to ask for the sanction of the Provincial Government, if he considers that sanction is necessary. The learned Magistrate before whom the complaint has been made has to decide this question juridically. If he considers that sanction of the Provincial Government is necessary it is his duty to dismiss the complaint for want of sanction; because he cannot take cognizance without such sanction. If on the contrary, he thinks that no sanction is necessary, then he ought to pass an appropriate order on the complaint filed before him. I do not think he can or should wait for Government orders on the subject. The cognizance which a Magistrate takes on a complaint is a judicial act, and it cannot depend on executive orders passed by the provincial Government.

4. I have given above my personal view that sanction is not necessary in this case. If, however, the provincial Government think that the case is of such a flagrant nature that sanction should be given in order to remove all doubt, there can be no objection to the grant of such sanction. The grant of sanction is merely an executive act and does not mean that the Provincial Government have come to any definite conclusion as to the guilt or otherwise of the accused.

It merely indicates that there is a *prima facie* case for which sanction should be given. There is no provision of law empowering the Provincial Government or an officer or Government to hold a judicial enquiry in order to ascertain whether or not sanction ought to be given. Any enquiry which may be held for the purpose will be merely and departmental enquiry. Even if the provincial Government do not give any sanction, the private complainant can press his complaint and prove to the satisfaction of the Court that no sanction is necessary in this case.

5. I must add that on Mr Ainsworth's own statement he has committed an offence for which he is liable under the law. It is for consideration whether in such circumstances there are any reasons for withholding sanction, if the complainant asks for such sanction from the Provincial Government.

6. I have also considered Section 42 of the Police Act in this connection. In my opinion that Section has no application in this case. The act which Mr Ainsworth committed was not an act done or intended to be done under the provisions of the Police Act or under the general police powers.

S.K. Das, 26-1-43.

1. Doc. 12.

2. Not punted.

15: Official Notings – Reg. treatment of prisoners detained without trial (dt 4.3.1943) (extracts)

File No. 44/6/42 – Home Poll (1)
[NAI]

For information. This seems to have crossed our letter to Provincial Govts dated the 20th February 1943.¹ A copy of which has been endorsed to the C.C., Ajmer Merwara. In any case the views contained in the C.C.'S letter are generally in accordance with those expressed in our letter.

A.D.B.

27.2.43.

S.No. 103. (Receipt)

For information.

Addl. Secy. may now wish to show H.M., H.E.'s minute of dated 4.2.43² and our letter dated 20.2.43.

4/3/43.

Specially in view of the fact that Mr Joshi has cut motions on this subject which may come up for discussion on 8th 9th and 10th March.

Addl. Secy.

Tottenham
4/3/43.

1. Doc. 19 – in Chapter I Sect. B. 2. Doc. 13 above.

16: Emperor v. Parmanand Rai and others (Opposite Party) [Iqbal Ahmad C.J., Allsop, Bajpai, Mohd Ismail and Hamilton J.J. — Full Bench (9 March 1943)]

AIR, Vol. 30, 1943, Allahabad, pp. 233-8

Criminal Revn. Nos 847 and 840 of 1942, Decided on *9th March 1943*, from order of Special Judge, Azamgarh, D 10th September 1942.

Government Advocate — for the Crown.

Shiva Prasad Sinha — for Opposite Party.

Iqbal Ahmad C.J. — This and the connected application in revision No. 840 of 1942 are two criminal applications in revision by the Provincial Government and arise under the following circumstances; On 14th August 1942, a mob set fire to the Notified Area Office at Mau with the result that the records and the building were destroyed. Two separate cases arising out of this occurrence were sent up by the police under S.136, Penal Code. There were ten accused in one case and one accused in the other. Both the cases were tried by Mr Masudul Hasan ostensibly acting as a Special Magistrate under Ordinance No. 2 of 1942. He convicted all the accused in both the cases and sentenced each of them to two years' rigorous imprisonment, and one of the accused, Radha Raman, was also ordered to pay a fine of Rs 500.

Two appeals were filed by the convicted persons 'in the Court of the Sessions Judge exercising the powers of Special Judge at Azamgarh and the appeals were headed as appeals 'under S.13 of the Special Criminal Courts Ordinance, 2 of 1942'. The learned Judge allowed the appeals, set aside the conviction and sentences of all the appellants in both the appeals and directed that the accused be committed to the Court of Sessions for trial 'after regular commitment proceedings have been held'. The two application in revision before us are directed against this order of the learned Judge. The learned Judge while signing the judgment described himself as 'Sessions Judge' and not as a special Judge. The appeals before him, however, purported to be under S.13 of the Ordinance and were preferred to him in his capacity as a Special Judge. It is, therefore manifest that he entertained, heard and decided the appeals as a Special and not as a Sessions Judge, and the cardinal question that arises for consideration is whether this Court is competent, in the exercise of its revisional jurisdiction, to interfere with the order passed by the learned Judge.

It appears that Mr Masudul Hasan had exercised the powers of a Magistrate of the first class for less than two years and, as such could not, in view of the provisions of S.9 of the Ordinance, be invested with the powers of a Special Magistrate under the Ordinance. The learned Judge, therefore, held, and rightly held, that the whole trial was ultra vires and illegal. The appeals by the convicted persons were, however, filed after the expiry of the period of seven days prescribed by subs (2) of S.13 of the Ordinance, and the Government Pleader accordingly raised a preliminary objection to the hearing of the appeals by the learned Judge on the ground that they were barred by time. The learned Judge overruled the preliminary

objection on the ground that as Mr Masudul Hasan was not legally 'a Special Magistrate' S.13 of the Ordinance had no application to the cases. He held that the cases should be 'treated as having been disposed of by an ordinary first class Magistrate' and therefore the appeals were within time. He then proceeded to determine the question as to 'what further proceeding should be taken in the cases'. He held that, as the offence with which the accused persons were charged was committed before the Ordinance was put into force in these Provinces, the accused persons could not be tried under the Ordinance. This view of the learned Judge was opposed to the view taken by this court in the Full Bench case in A.I.R. 1943 ALL. 26 and was clearly erroneous. Having arrived at the conclusion just mentioned, the learned Judge passed the order for the commitment of the accused as stated above. In the full Bench decision in A.I.R. 1943 ALL. 26 I held that the words of S.26 of the Ordinance are very wide and completely bar the revisional jurisdiction of this Court in cases tried and decided by Special Magistrates or Special Judges, and I still adhere to that view. Section 26 runs as follows.

Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Ordinance, be no appeal from any order or sentence of a Court constituted under this Ordinance and, save as aforesaid, no Court shall have authority revise such order or sentence, or to transfer any case from any such Court, or to make any order under S.491 of the Code or have any jurisdiction of any kind in respect of any proceedings of any such Court.

As the Court of a Special Judge is constituted under the Ordinance, this Court has no authority to revise the order of a Special Judge howsoever erroneous or unjust it may be. The learned Judge was clearly wrong in holding that the accused could not be tried in accordance with the provisions of the Ordinance and his order that they should be committed to the Court of Session after regular commitment proceedings was, therefore, also contrary to law. But as the revisional jurisdiction of this Court has, by words of clear and unambiguous import, been barred, this court cannot assume jurisdiction to correct an erroneous order passed by a Special Judge. As I read S.26 of the Ordinance, it appears to me that this Court cannot, in any manner whatsoever, interfere with the orders passed by a Court validly constituted under the Ordinance, be it a Court of a special Magistrate or a Court of a Special Judge. To this effect is the full Bench decision of the Patna High Court in A.I.R. 1943 Pat. 18 and I am in full agreement with that decision to this extent that the High Court cannot, in the exercise of its revisional jurisdiction, interfere with the orders passed by Special Magistrates and Special Judges. The Patna High Court, however, went further and held that if the Ordinance under which the petitioners were tried was not applicable to their cases, then their trial was not trial at all in the eye of law and they cannot be detained in prison, because they should be deemed to have been committed to prison without trial and because the Magistrates who have sentenced them to imprisonment had no power to send them to prison and that the High Court may direct under S.491, Criminal P.C., that the petitioners who were illegally detained be set at liberty. With all respect, I am unable to agree with this view. Section 26 explicitly prohibits the passing of an order under S.491, Criminal P.C., in cases taken cognizance of by Special Magistrates or Special Judges and this prohibition is, to my mind, absolute. For the reasons given above, I would dismiss both the applications in revision.

Allsop J. — The Local Government have made two applications to us for the revision of orders passed by the Sessions judge of Azamgarh on two appeals in the course of one judgment. The two cases arose out of a single occurrence. There were ten accused in one

case and one in the other and they were all convicted by Mr Masudul Hasan of offences punishable under S.436, Penal Code. Mr Masudul Hasan purporting to act as a Special Magistrate under Ordinance 2 of 1942 sentenced the accused each to rigorous imprisonment for a period of two years and one of them to a fine of Rs 500 in addition. The learned Judge found that Mr Masudul Hasan was not competent to act as a Special Magistrate because he had not been exercising first class powers for a period of two years. The Ordinance allows the Local Government to appoint as a Special Magistrate only a person who has been exercising first class powers for this period. The appeals were to the Sessions Judge acting in his capacity as a Special Judge under the Ordinance. It was urged by the Government Pleader that the appeals were barred by limitation because they had not been presented within seven days after the date of the Magistrate's order. The learned Judge, however, overruled this point upon the ground that the Magistrate had acted *ultra vires* and that the whole trial was void. He set aside the convictions and sentences and directed that the accused should be committed to the Court of Session for trial after the required commitment proceedings had been held provided that the Magistrate who conducted those proceedings was satisfied that a *prima facie* case was made out. In the ordinary course an offence punishable under S.436, Penal Code, can be tried only by the court of Session.

It is not clear whether the learned Judge intended to pass this order in his capacity as a Sessions Judge or in his capacity as a Special Judge under the Ordinance. It seems to me that he was probably not very clear upon this point himself. The Ordinance has set up certain Special Courts which are not amenable to the jurisdiction of the High Court and it is purely a matter of coincidence that persons who preside over Special Courts at the same time preside over ordinary Courts which are subject to such jurisdiction. These persons should be careful to distinguish between their functions as presiding officers of these different Courts. If the learned Judge intended to pass orders in his capacity as a Sessions Judge those orders are subject to revision by this Court. In the case, I should say that the orders do substantial justice and that there is no reason why this Court should interfere with them. On the other hand, if the learned Judge intended to pass these orders in his capacity as a Special Judge under the Ordinance I am satisfied that this Court has no jurisdiction whatsoever. Section 26 of the Ordinance makes the matter perfectly clear. It lays down without any manner of doubt that this Court must not interfere with any order passed by a Court of a Special Judge or a Special Magistrate constituted under the Ordinance. Whatever the position of the Magistrate may have been the learned Judge was undoubtedly presiding over a Court so constituted. When the section speaks of a Court constituted under the Ordinance it no doubt means a Court properly so constituted and this Court could go into the question of the proper constitution of the Court but once it has held that a Court has been properly constituted I consider that it cannot interfere with any order passed by that Court. If the section spoke of an order passed under the Ordinance, this Court could doubtless consider whether the order could be said to have been passed under the Ordinance and if it dealt with some matters which were not within the purview of the Ordinance it could act accordingly, but that is not the wording of the section. In my judgment, once a special Court has been properly constituted under the Ordinance this Court has no jurisdiction to interfere with any order passed by that Court whether that order comes within the purview of the Ordinance or does not do so. The person aggrieved or any other person interested may possibly, at his own risk, ignore an order which he considers is passed without jurisdiction, but this Court cannot interfere with such an order in appeal or in revision or for that matter under the provisions of S.491, Criminal P.C., which

is specifically mentioned in the section. I hold that there is no force in these applications and I would dismiss them both.

Bajpai J. — This is an application in revision on behalf of the Provincial Government and is headed as a revision under Ss. 435 and 439 read with S.423, Criminal P.C., against the order passed by W. Broome Esqr. I.C.S., Sessions Judge of Azamgarh, dated 10th September 1942. It is connected with Criminal Revision No. 847 of 1942 where also the heading of the Criminal revision is similar. I have emphasised the heading because I think it is of some importance that the Provincial Government treat the proceedings as a revision under the Code of Criminal Procedure against the order of a Sessions Judge, and I have little doubt that the revision in spirit and in letter is as indicated above. The facts are that the opposite parties in the two revision petitions were tried by Mr Masudul Hasan, a Magistrate of the first class, for an offence under S. 436, Penal Code. The Magistrate tried the offences under Ordinance No. 2 of 1942 arrogating to himself the capacity of a Special Magistrate constituted under the Ordinance. It is, however, clear that he had been exercising first class powers only since 23rd November 1940, and thus did not possess the necessary qualification laid down by S.9 of Ordinance No. 2. He must, therefore, be deemed to be an ordinary first class Magistrate and as such Magistrate he was not empowered under the Criminal Procedure Code to try an offence under S.436, Penal Code. The question which arises is that if a Magistrate usurps jurisdiction which he does not possess can his action be questioned before a superior tribunal — superior to an ordinary Magistrate, but not superior as not possessing appellate jurisdiction to a Special Magistrate? It may be conceded that when in the present case if Mr Masudul Hasan was a Special Magistrate the learned Sessions Judge entertained the appeal, the appeal was time barred by virtue of S.13 of the Ordinance because it was presented more than seven days after the date of the sentence passed by Mr Masudul Hasan. but the said officer was, as pointed out above, not a Special Magistrate and he could not, therefore, have tried the case under the Ordinance and the trial must, therefore, be deemed to be an ordinary trial under the Criminal Procedure Code which, as once again pointed out before, could not have been conducted by an ordinary Magistrate in as much as an offence under S.436, Penal Code, is triable exclusively by a Court of session and Mr Broome therefore rightly entertained the appeal.

I have little doubt that the order passed in the present case by Mr Masudul Hasan could be questioned in appeal before the learned Sessions Judge. It is true that the appeal before him was headed by the opposite parties as an appeal against a decision under S.13 of the Special Criminal Courts Ordinance 2 of 1942, in the Court of the Sessions Judge exercising the powers of a Special Judge, but it was also said that Mr Masudul Hasan had been exercising the powers of a First Class Magistrate for less than two years and Mr Masudul Hasan was not described as a Special Magistrate. What then is the result of the entire proceedings from beginning to end: Mr Masudul Hasan was not a Special Magistrate; he tried the case as a Special Magistrate; he usurped jurisdiction which he did not possess; he was therefore an ordinary Magistrate following a procedure which he was not competent to follow and as an ordinary Magistrate he could not take cognizance of an offence under S.436, Penal Code, in the sense that he could not himself convict the accused, and the Sessions Judge as a Sessions Judge — not as a Special Judge — was authorized to pass orders in appeal and a revision against the decision of the Sessions Judge lay to this Court under the provisions of Ss. 435 and 439, Criminal P.C. The complications of the revisional powers of the High Court under S.26 of the Ordinance do not arise in the present case. My views about the revisional powers of the High Court in cases under the Ordinance are stated at length in the Full Bench case

in A.I.R. 1943 ALL. 26 at p. 39, etc., and even if it be held that the revisional powers of the High Court under the Ordinance have to be considered, this Court has the power in the circumstances of the present case to entertain the revision.

I have thus now to see whether the order of the learned Sessions Judge is right or requires interference. The learned Sessions Judge has pointed out that Mr Masudul Hasan could not act as a Special Magistrate and that as an ordinary First Class Magistrate he could not try a case under S.436, Penal Code. There can be little controversy on the above two points. The learned Sessions Judge further points out that the particular offence with which the accused were charged was committed on 14th August 1942 before the Special Criminal Courts Ordinance was brought into force in the United Provinces by the notification issued on 20th August, and therefore the present case could not be tried by Special Courts which were not in existence in the United Provinces at the time when the offence was committed. This opinion is in keeping with my own views expressed in A.I.R. 1943 ALL. 26 but this opinion is not in conformity with the opinion of the majority in that case, but as a member of this Bench, I am not bound by the aforesaid Full Bench and I am free to express my own individual opinion, unfettered by anything that might have been said in the earlier case. In my view, the order of Mr Broome is correct on all points. For the reasons given above, I hold that there is no force in this revision and I would therefore dismiss it.

Mohd. Ismail J. – The two connected revisions arise out of the same incident, which occurred on 14th August 1942. Radha Raman and nine others were tried together in one case and Parmana J Rai was tried separately in another, by Mr Masudul Hasan as Special Magistrate under Ordinance 2 of 1942. The trial ended in the conviction of all the accused, who were sentenced to two years rigorous imprisonment each. Radha Raman was awarded a fine of Rs 500 in addition to the sentence of imprisonment. The convicted persons appealed to the Special Judge under S.13 of the Ordinance. The appeal was made beyond time, that is after the expiry of seven days allowed by S.13 (2). As the sentences imposed upon the appellants do not exceed two years, no appeal lay from the order of the Special Magistrate.

The Special Judge has set aside the orders of the Special Magistrate on several grounds. He held that the cases could not be tried under the Ordinance because the offence was committed before the enforcement of the Ordinance. The opinion of the Special Judge is in conflict with the majority view in 1942 A.L.J. 686. The Special Judge further held that the Magistrate was not competent to try the cases under the Ordinance because his appointment itself was illegal, as he had not exercised the powers of a Magistrate of the first class for a period of two years. Some other reasons were given by the Special Judge, which need not be enumerated. Eventually, upon setting aside the convictions and sentences of all the accused, the Special Judge directed the Magistrate to commit the accused to the Court of Session for trial under the Code of Criminal Procedure. The Provincial Government has now come to this Court in revision. It is conceded that Mr Broome enjoyed the powers of a Special Judge; but it is argued that the orders passed by the Special judge were illegal and improper and therefore should be set aside. In my opinion, the revisions are incompetent and cannot be entertained by this Court. Section 26 of the Ordinance provides.

Notwithstanding the provisions of the Code, or of any other law for the time being in force, or of anything having the force of law by whatsoever authority made or done, there shall, save as provided in this Ordinance be no appeal any order or sentence by a Court constituted under this Ordinance and save as aforesaid, no Court shall have authority to revise such order or sentence . . . or have any jurisdiction of any kind in respect of any proceeding of any such Court.

As the cases were tried under the Ordinance and no appeal or revision is provided under the Ordinance to this Court, it is manifest that the applications must be dismissed. Our attention has been drawn to a Full Bench decision of the Patna High Court in A.I.R. 1943 Pat. 18. In that case it was held:

As the Special Magistrates derive their jurisdiction from the Ordinance, they cannot be properly described as 'inferior criminal Courts' and the High Court cannot revise their orders but the High Court is not entirely powerless in the matter. Under S.491, Criminal P.C., the High Court may direct that a person illegally or improperly detained in public or private custody within the limits of its appellate criminal jurisdiction be set at liberty. If the Ordinance under which the petitioners were tried was not applicable to their cases, then their trial was no trial at all in the eye of law and they cannot be detained in a prison, because they should be deemed to have been committed to prison without trial and because the Magistrates who have sentenced them to imprisonment had no power to send them to prison.

The facts of that case are entirely distinguishable and therefore I do not consider it necessary to express any opinion with regard to the observation of the learned Chief Justice of Patna High Court. In the present case we are asked to revise the orders of Special Judge. No one has been illegally detained in or sent to prison by him. The orders of the Special Judge may be erroneous, but in my judgment, we have no power to revise those orders. For the reasons given above I would dismiss the applications.

Hamilton J. — I agree with the judgment of Allsop J. and I would reject these applications for the reasons which he has given.

By the Court. — These two applications are dismissed.

Application dismissed.

G.N.

17: Governor of Bihar to the Viceroy (case of Ainsworth)

Linlithgow Collection

[NAI — Acc. No. 2385]

From, H.E. Mr T.G. Rutherford, C.S.I., C.I.E., Governor of Bihar.

No. 187. G.B.

March 13th, 1943.

Dear Lord Linlithgow,

I enclose a copy of the Commissioner's report on his enquiry into the Ainsworth case. Beyond establishing the fact that some soldiers of the Wiltshire Regiment took part in the affair, I fear that it does not add very much to our stock of positive information. The Commissioner's anxiety to safeguard the statements made before him by the persons whom he examined doubtless accounts for the general impression given by his report that he has concerned himself with probabilities more than with actual evidence; but I understand that in fact his conclusions are based on a careful consideration of the statements recorded by him. We have now at least

the definite finding of a responsible and impartial officer that the injuries were inflicted 'not with the intention of causing death, and without the knowledge that the injuries inflicted were likely to cause death'. From this finding I see no reason to dissent, although, on reading the Commissioner's fuller account of what transpired that day at Ainsworth's bungalow, I confess that I am far from happy about the callousness which was displayed by everybody concerned in their treatment of the deceased and his companions. I recognise, however, that it is easy enough at this point of time and in cold blood to criticise what was done in the heat of the moment by men who were grappling to the best of their ability with a rebellious outbreak and who had been assured of the support of Government in any action which they considered necessary to deal with it; and I am reluctant to apply the ordinary standards in sitting in judgment on them. In the case of Ainsworth himself, I feel this the more strongly because of the admirable work he did throughout the disturbances in Shababad District. General Wakely has recently brought to my notice the names of various civilian officers who from the military point of view acquitted themselves with distinction during the Congress rebellion. Among these officers Ainsworth takes a high place, and the remarks made about him are as follows:

This Police Officer did outstanding work in Shababad area during the recent disturbances. It was due to his drive and energetic co-operation with the Military at all times that the Company of I Wilt's stationed at Arrah was able to reopen, rapidly, communications in this District, thereby enabling villages harbouring saboteurs to be visited, loot recovered and arrests made.

This officer lived at the Headquarters of the above Company and during the first three weeks went on all operations with them. His tireless energy, devotion to duty and cheerful manner at all times was a splendid example to all ranks who accompanied him. His knowledge of the District and his subordinates, and the assistance he gave to the military, proved invaluable.

Wakely has repeated his commendation to me personally when, in talk with him, I expressed doubt whether it was wise to keep him in Bhagalpur area for the special operations now ordered. The officer under whom he has been serving in that area sent his name up recently for a 'gallantry' Indian Police Medal on grounds which I should ordinarily have had no hesitation in endorsing but which, as things stand, I have naturally had to hold over for the present. I must also reiterate once more my view that, if Ainsworth were 'broken' over this incident, whether departmentally or by means of a criminal prosecution the effect on the whole Police Force in Bihar would be disastrous.

2. The Commissioner's report makes no mention of the criminal complaint which was filed by the brother of the deceased. He ascertained, however, that after the record of the case had been called for by Government, it was entered in the Complaint Register by the Sub-divisional Officer's Bench Clerk. It must therefore be regarded as being 'on the criminal file' and in due course it will have to be disposed of formally. But the complainant, who was seen by the Commissioner, evinced no particular anxiety to take the matter further.

3. My conclusion is that this unfortunate incident should be disposed of on the lines indicated in paragraph 4 of Your Excellency's letter, dated the 16th January, viz., 'departmental reprimand and perhaps transfer to another Province'.¹ I believe the North West Frontier Province would be glad to have him. I feel, however, that it is impossible to record any order on the Commissioner's report until we are finally secured against the possibility of further development in the criminal courts. And, as Your Excellency has pointed out, an Act on Indemnity is the only solution of this particular problem. So far as Ainsworth is concerned, I should be prepared to refuse sanction under Section 197, but there can be no assurance that

the High Court would not hold such sanction to be unnecessary; and in any case the Military Mounted Police and the soldiers are definitely outside the scope of this protection. I was disappointed to learn that developments in Bengal looked like holding up the enactment of this indemnity legislation in Bihar and the United Provinces, and, unless this difficulty can be resolved very soon, I would most earnestly ask Your Excellency to allow us to go ahead without waiting for Bengal.

Yours Sincerely,
T.G. Rutherford.

[125 (25-A.).G.G.-42.]

Enclosure

Report on the Commissioner's Enquiry into the death of undertrial Prisoner Kailaspati.

Part I

In September 1942, while conditions in Arrah were still disturbed, 4 satyagrahi demonstrators were arrested by 2 sowars of the mounted police, and taken to the bungalow of their Commanding Officer (who is also A.S.P.) for his orders. Before handing them over to the district police, the A.S.P. obtained permission to question them so as to find out where they had got the pamphlets they were distributing. Admittedly, force was used to extract the information. Shortly after, one of the four prisoners collapsed and died.

2. This report supplements the enquiry made by the S.D.O., Arrah, S.K. Ahsan, on September 30th/October 1st, a few days after the death of the under-trial prisoner Kailaspati. I have questioned all the relevant witnesses of the first enquiry and visited the scene of occurrence. I have also prepared a rough sketch of the compound of the A.S.P.'s bungalow, and attach a trace of the Town Map showing the locality and surroundings.

3. The finding of the S.D.C. is as follows:

The only conclusion one can therefore arrive at is that the deceased received these injuries with sticks and the manner described by the Civil Surgeon while he was in the custody of the M.M.P. probably at the A.S.P.'s bungalow although it is not possible to say which particular man was responsible for these injuries, for there were 15 M.M.P. sowars and recruits, and the deceased's companions are themselves unable to say how, and at whose hands, the deceased received these injuries.

4. My enquiries follow 3 main lines:

- (a) At what time and place were the injuries received?
- (b) How were they inflicted?
- (c) By whom were they inflicted?

During my enquiry some important facts came to light. When visiting the bungalow of the A.S.P. I was shown the place where the arrested men were interrogated. This was in the open air, adjoining the back verandha. On the day in question, in fact from August to October, the A.S.P.'s bungalow and compound was occupied by a detachment of the Wilts regiment, consisting of British Officers and men with motor transport. The tents, in which officers and men lived, were close to the place where the prisoners were questioned. This explains the references to *gora log* made by the prisoners at the S.D.O.'s enquiry. Further, there is good

reason to believe that the *gora log* were not only present at the time and place of questioning, but also took part in the proceedings.

5. To consider the first question, *viz.* the time and place. The custody of the M.M.P. extended from the time of arrest near the Collectorate to the time of making over the prisoners to *thana hayat* at the Arrah Town P.S. The injuries were certainly received while the deceased was in custody of the M.M.P. The question is, whether (a) at the bungalow or (b) in transit to or from the bungalow.

Transit to. I regard this as improbable. In the first place, the other prisoners emphasise that they were *salyagrahis*, and consequently offered no *resistance*. Police constables on duty near the Collectorate all deny that they even touched the prisoners. The M.M.P. sowars were returning from the bazar in mufti, with swagger canes (known as hunters). It can safely be assumed that, beyond one or two cuts with the swagger canes, no injury was inflicted at this stage.

Transit from the A.S.P.'s bungalow to the town thana, in the Police lorry.

The distance is just over a mile, and the transit time would be roughly 5 minutes. The first half of the route is alongside the open *maidan*, but the second half is through bazar.

In favour of the theory that injuries were inflicted on Kailaspati during transit are

- (i) The same set of sowars, in the same lorry, later in the same afternoon, ill treated another batch of *satyagrahis*, inflicting severe injuries on one man, and minor injuries on others.
- (ii) The lorry had a tarpaulin cover hiding the interior from view. The noise of the engine is sufficient to drown any cries of distress.

Against the theory are the following points.

- (a) Out of the second batch, who travelled in this lorry on the second trip, only one prisoner Ramasan mentions kicks, or prod with a stick. The rest (witnesses 26, 27, 28 and 30) mention slaps, blows with swagger canes and the throttling hand grip.
- (b) According to the A.S.P., who travelled in the lorry, the sowars were wearing *chappis*, not boots.
- (c) According to prisoner Balesar, the sowars in the lorry on the first trip were barefooted. In either case, the sowars can hardly have put sufficient force into kicks to break a rib. Their weapons were swagger canes and their bare hands.

Finding – My finding on question (a) is that the fractures of ribs and bones of the hand were not received while in transit, but in the A.S.P.'s compound.

Question (b) – How were they inflicted? The deceased was at least 50 years old, and evidence states that, with advancing years, bones become more friable.

The injuries on the deceased may be compared with those on his companions, *vide* the Charts A & B. Taking the injuries on Kailaspati, one by one:

Injuries to –

- (1) Buttocks: were admittedly due to blows with sword sticks. Medical evidence agrees.
- (2) Back: eleven lathi marks. Injuries are consistent with the previous explanation above.
- (3) Fracture of rib 3, on left side. The surface showed a bruise $1 \times 1\frac{3}{4}$ described as circular. The position is high, well above the nipple of the breast. If it was actually caused by a *lathi*, there is no evidence on record of poking with a *lathi*.

- (4) Fracture of ribs 9 and 10 on right side. The bruise was measured by Civil Surgeon as 3×4 inches. The Civil Surgeon, questioned by me, demonstrated a position midway between the armpit and the hip joint, and crossing the ribs obliquely. He gave the opinion that it was caused by a kick.

The size of the bruise is hardly consistent with a single kick, and there is no evidence of repeated kicks. The arguments in favour of the kick theory are:

- (i) A suggestion put to me by Ainsworth (A.S.P.) that the injury might have been caused by a stray kick from the soldiers when he wasn't looking;
- (ii) Compare Chart B evidence of the prisoner Gulab Chand that the A.S.P. knocked him down, and kicked him in the testicles;
- (iii) *Vide* also Chart B where prisoner Balesar alleges that he was knocked down by 'one of the *goras*' (not the A.S.P.) who then kicked him in the ribs.

The difficulty of this theory is that on the other prisoners there is no medical evidence of kicks, either in the ribs or testicles.

7. An alternative suggestion, which occurred to me when I examined the police lorry, is this. The fracture of ribs 9 and 10, with a bruise 3×4 in the side, would be consistent with the theory that Kailaspati was swung and pitched into the lorry, but accidentally landed with his side against the projecting edge of the floor, which is at chest-height from the ground. The sketch below illustrates the idea.

8. Points which support this theory are:

- (i) A.S.P. Ainsworth, in describing how Kailaspati had to be put into the lorry after the beating, revealed that there were some soldiers there, who picked him up and gave him a 1-2-8 swing' inside.
- (ii) Compare also Chart B and Balesar's account of the loading at the A.S.P.'s bungalow and the unloading at the *thana*.
- (iii) Compare also Chart B and Gulab Chand's account of how 4 men seized his extremities, hand and feet, swung him in the air, and pitched him to a distance, during the questioning. *Against* the swing theory (a) *vide* the Chart B, and Balesar's account given to Commissioner of how they moved *upright* to the lorry, after questioning. But he goes on to say that they put us in with a shove and a lift (b) the 3 M.M.P. sowars and driver Abdul Kaum all assert that the prisoners had no help in getting into the lorry, using the foot-holes in the tail-board.

9. *Finding.* — My findings on the second question are:

- (1) The bruises and surface injuries were due to blows with sword-sticks. It is also possible that the deceased was subjected to swinging and pitching, as described by Gulab Chand
- (2) The fracture of the third rib. There is no evidence of the use of a *lathi*, or any poke or prodding blow. If, in the course of pitching, the deceased landed face downwards on a brick or hard-pointed object, the impact might have been sufficiently violent to cause a fracture.
- (3) The fracture of the 9th and 10th ribs is attributed by Civil Surgeon to a kick with a booted foot. This is a clear statement of opinion by a medical man which is entitled to respect. It can be supported by other references to kicks in the course of the enquiry

For example (*vide* Chart B) the companions of the deceased, Balesar and Gulab Chand both claim to have been knocked down and kicked in the ribs and testicles though medical examination does not mention any such injury. But as regards Kailaspati and his injuries no prisoner can say how he came by them. None of the witnesses mention that Kailas was kicked. If this injury, and its attendant bruise size 3×4 inches, is really the result of a single kick, it must have been exceptionally violent. The alternative theory, for which there is good evidence, would better explain the violence of the blow, and the size of the bruise. I regard this theory as the more probable.

10. *Question (c)* - By whom were the injuries inflicted? Weals, bruises and surface injuries were admittedly the result of beating. The beating was admittedly under the direction of the A.S.P. Sowars have stated that their instructions were to take care not to damage the prisoners, so much as to frighten them. The A.S.P. has asserted that, so far as possible he supervised the questioning and beating, though he does not claim to have seen each stroke as given to the four men. He adds that some men from the Regiment tried 'to interfere with rough stuff' but that he stopped them. This interference by soldiers of the Wiltshire Regiment is mentioned again by the A.S.P. When asked whether, later at the *thana* he noticed any prisoner bleeding from the nose, his reply was that there may have been one prisoner bleeding from the nose, possibly it was the one hit in the face by a Tommy, who was checked by his officer Avery.

11. As regards the kick theory, the A.S.P. is emphatic that no injury with a booted foot can have been due to him or to the M.M.P., as he was in slippers and M.M.P. were wearing *chappis*. I have examined this statement along with the evidence, and find that it is consistent. At the lunch hour, in the heat of September, it was not unlikely that the A.S.P. would be at his house in slippers: and he notes at one stage in his story that, before leaving to join the lorry, he went indoors for his hat. The place where the questioning was done was just outside the A.S.P.'s bungalow, and there was no need for him to be in any uniform except undress.

The sowars (according to one prisoner) who were in the lorry had bare feet: but of course the entire party engaged in beating did not enter the lorry. The recruits were left behind at the bungalow. From what I have seen of the frontiers men who recruit in the M.M.P. they prefer their *chappis* country shoes to the army ammunition boot, and they would probably discard boots when off duty. I believe therefore that if the fractures were due to a kick (or kicks) with booted foot, they were not kicks given by the A.S.P. or the Mounted Police sowars.

12. Taking the alternative theory, *viz.*, that Kailaspati deceased landed with violence on the sharp corner of the lorry flooring, when being pitched in horizontally, the question is, who pitched him in. On this question the evidence is conflicting. We have the A.S.P.'s version, that Kailaspati was pitched in by the soldiers. Against this is the remark of the prisoner Gulab Chand that the *gora log* 'were not doing (saying) anything' near the lorry.

It may well be that each prisoner was dealt with separately, at a distance from his fellow, and had little chance of seeing what happened to others beyond his own group. For example the sowar Abdul Ghafar described to me how 'each prisoner got about 10 or 12 strokes in all. Not regularly. At intervals, with question in between. There were not four groups under questioning at one time, it went on separately and in turn, now this one and now that one.'

A recruit Abdul Shakur, asked by me why the man whom he was beating did not run away, replied naively that the *gora log* were holding the prisoner. Out of the four prisoners two were held by soldiers, and two by sowars. Thus there is nothing improbable in the remark of the A.S.P. that it was soldiers who pitched Kailaspati into the lorry. There is already evidence

to show that they assisted in the beating on the buttocks, and (as A.S.P. asserts) they tried to go further and 'interfere with rough stuff'.

Out of the various versions before me, and on the inadequate evidence available, I can only record a finding that soldiers unknown of the Wiltshire Regiment took part both in the beating and in the loading of the prisoners into the lorry. The chief part was played by Abdul Karim, Abdul Ghafar and other sowars of the mounted police, acting under the instructions of the A.S.P. Mr Ainsworth.

I believe that the injuries were inflicted with the intention of forcing a confession, not with the intention of causing death, and without the knowledge that the injuries inflicted were likely to cause death.

Illegible,

Commissioner.

Patna, February 25th, 1943.

[Enclosure.]¹

M.M.P. Lines

- A. The lorry M.M. Police in position for loading.
- B. Tents of British soldiers.
- C. Tents of British Officers.
- D. Outhouse of bungalow.

Rough sketch of A.S.P.'s bungalow at Arrah. The compound of A.S.P.'s house formed the camp of a detachment of officers and men of the Wilts Regiment with their M.T. Lorries. I visited the camp more than once in August-September 1942. The sketch is not to scale. The distance 30 yards from the entrance of A.S.P.'s room to the lorry stand was paced.

A spicemen sword stick, as used by the M.M.P. for dispersing crowds, was examined. It is roughly the shape and dimensions of a sword, except that the blade is made of springily cane, leather covered, diameter 3/4 inch.

1 Doc. 16.

2. None of the enclosures are printed.



18: Govt. of Sind to Govt. of India – (Treatment of prisoners)

File No. 44/6/42 – Home Poll (I)
[NAI]

Govt. of Sind.
Home Dept. (Special)
Sind Secretariat,
Karachi,

March 29, 1943.

Serial No. 111.

Secret
No S D 133/78/1.

To
Home, New Delhi.
Subject. *Civil Disobedience Mouv.*
Treatment of 'Q' class prisoners.

Reference paragraph 2 of your letter No. 44/6/42 – Poll (I) dated the 20th February 1943,¹ on the above subject.

2. A copy of this Govt. Order No S.D. 133/78/1, dt the 8th March 1943, permitting 'Q' class prisoners to have interviews with their near relatives only, is enclosed for information.

Signed (illegible)
Assist. Secy. to Govt.

Secret.
No S D. 133/78/1.

Govt. of Sind,
Home Dept. (Special),
Karachi,
8th March, 1943.

To
All D.M.
The I.G.P. Sind.
The I.G. Prisoners, Sind
All Dist Judge.
The Registrar, Chief Court of Sind.
All D.S.P.
The S.P., Sind, C.I.D.
All Superintendents of Jails

Order

'Q' class prisoners may be permitted to have interviews in accordance with the provisions of Rule 10 of the security prisoners Detention condition Order, 1941. They should be considered to be class I prisoners for the purpose of paragraph (5) of the Rule.

Chief Secy. to Govt.

1 See Chapter I-B -- Doc. No. 19.

19: Govt. of Bengal to Govt. of India – (Treatment of prisoners)

File No. 44/6/42 – Home Poll (I)

INT.

Serial No. 110.

From Govt. of Bengal,
Home Department.

To Home, New Delhi.

No. 3818 H.J.

Dated the 30th March, 1943.

Subject: Treatment of prisoners detained without trial in connection with the Congress movement.

Reference: Govt. of India (Home) Dept. Exp. letter No. 44/6/42 – Poll (I), dated 20th February 1943.¹

1. This Govt. do not for the present propose to depart from the policy reported in their express letter No. 8855 – H.J. dated the 21st December, 1942.²

2. Although except for the security prisoners of Midnapore district this Govt. have not and do not propose to withdraw any concessions in the matter of letters and interviews previously enjoyed, it may be noted that the following precautions have been and will continue to be taken in respect of all security prisoners:

- (a) Interviews are not allowed as a matter of course, and are refused in all cases where Govt. security – advisers consider such refusal desirable. When allowed, interviews are held under the strictest possible supervision.
- (b) Letters received and despatched by all security prisoners are subjected to strict censorship.

Signed
Dy. Secy. to the Govt. of Bengal.

1. See Chapter I-B Doc. 19-B. 2. Not printed.

20: Official Notings regarding treatment of prisoners (dt 2.4.1943) (extracts)

File No. 44/6/42 - Home Poll (I)

[NAI]

S No. 110

Bengal are satisfied¹ with their arrangements for supervision of interviews & censorship of correspondence and would not impose any further restrictions. In view of what is stated in para 3 H E.'s minute of 4.2 it is for orders whether any further reference should be made to Bengal.

S No. 111

Rule 10 of the Sind Rules² does not state their interview should be with near relatives only. The permission of the I.G. of police is however required for interviews with anyone other than a near relative and it is not clear whether Sind have issued any general instructions to the I.G. prohibiting the grant of such permission. Should we make an enquiry³

2443.

Sl. No. 110 - Considering that security prisoners from Midnapore are not given the treatment which Bengal give to others, I do not know whether we should press them further.

Sl. No. 111. - The I.G. will doubtless exercise his discretion carefully. No further action

V. Sahay.
2.4.43.

1 - Doc. 19 above

2 - Doc. 13

3 - Doc. 18

21: Governor of Bihar to the Viceroy

Linlithgow Collection

[NAI - Acc. No. 2385]

From H.E. Sir Thomas Rutherford, K.C.S.I., C.I.E., Governor of Bihar.

[Secret]

No. 220-G.B.

April 4th, 1943.

Dear Lord Linlithgow

I enclose a copy of the Chief Secretary's report¹ for the first half of March 1943; that for the second half of March is not ready yet. When at Delhi I mentioned to you personally anything

of importance for the period from the 5th March. The day after my return from Delhi I proceeded to Bhagalpur and thereafter to Monghyr.

2. Although the operations in the Bhagalpur division against dacoits started on the 15th of last month, I regret to say that there has been a number of further dacoities and outrages — almost a counter-offensive in fact—but a number of dacoits have been already rounded up including one important leader for whose apprehension a reward of Rs 3,000 had been offered. Rs 1,500 of this goes to the police and the other half to informers. I saw Creed who is in charge of the operations when at Bhagalpur and he reported that there were signs of returning local confidence, information was coming in and some absconders were giving themselves up to Magistrates, but there were indications of the 'rebels' moving into new areas. At the Darbar held at Bhagalpur a number of rewards were given for good work during the disturbances including the Station Master of Kiul who personally saved a number of ammunition wagons from destruction. I took the opportunity to emphasise that these outrages in the Bhagalpur division were an aftermath of the Congress rebellion, that I was determined to put down disorder and that we must have more co-operation from the public if Police Forces were not to be so increased as to seriously interfere with expenditure on such things as medical relief and I attempted to bring home to my audience that the Police were not an alien force but their own organised for their protection against anti-social elements and the rogues among them such as occur among all Police Forces—were their own rogues and it was up to them to give unbiased and unexaggerated information if they misbehave.

3. I inspected the Camp Jail and the Central Jail at Bhagalpur. The Bihar Public Works Department are to be congratulated on the rapidity with which they have got this Camp Jail constructed, done I understand by commandeering every brick in the town; it was started in November and accommodation for a thousand prisoners was ready by 1st March. Completion of accommodation for 3,000 prisoners in all held up by failure or inability of the Controlling Officer to let us have wagons for coal for burning more bricks. In the Central Jail I again found a number of prisoners for whose detention there seemed to be no legal basis and was rather startled when the Superintendent of Police innocently remarked that they were still trying out of the mass of reports and records 'to fit cases to accused'. I found a number of young boys of 11 to 13 years age amongst the political prisoners who had been jailed for minor offences and ordered their immediate release. I was surprised to find amongst the women prisoners some quite young and well-brought up girls sentenced for sabotage; one woman had been 8 months without trial. No attempt had so far been made to exact any kind of labour from the so-called political prisoners sentenced to rigorous imprisonment. It is a problem with jails so crowded but they can at least be made to grind their own *atta* and do their own 'chores' except the scavenging which in any jail is usually done by the lowest class of ordinary prisoners. District Magistrates and Superintendents of Police seem still to be too busy to thoroughly overhaul this question of under trials and people without charge-sheets and as I have nobody I can spare for special duty to go round the jails I have ordered the Commissioners of divisions to do it for the jails in their areas. I found here also progress of cases before the Special Judges very slow partly due to investigating officers being held to their stations by current work and partly perhaps to the judges themselves.

1. Not printed. [Omitted paras 4 to 11 which deal with other topics — Ed.]

22. Representation by a security prisoner to the Govt. of Madras

Govt. of Madras Pub. (Gen.) Dept. 1943 - File G.O. No. 1278
[TNA]

To The Chief Secretary
Madras Government, Madras.

13.4.43

From P.M. Adikesavalu Naicker.¹
Detenue in Vellore, C. Jail.

Through the Superintendent Central Jail Vellore.

1. I am detained in this jail under rule 26 (D.L.R.) for an indefinite period and without trial since August last.

2. No. 27343, I received a summons from the High Court of judicature at Madras, ordinary original Civil jurisdiction in C.S. No. 15 of 1943. Shri Lall Govind Das Krishnadas Varu and others Vs Shri Satyamurti and others including myself, in which a sum of Rs 14000 is claimed as damages against the defendants.

3. This summons wanted me to submit my defence along with relevant documents within two weeks approximately by 11.4.43. In reply I wrote to the High Court requesting it to grant me facilities for engaging lawyers and instructing them for the defence, specially as all interviews are denied to me. The High Court has, by its letter dated 2.4.43, which I received on 11.4.43, directed me to address my request to you.

A very big amount is involved in this suit which relates to an incident alleged to have taken place 3 years ago. In order to defend my case properly I shall be required to have frequent interviews with my lawyers and relatives, and consult the documents which will not be easily available under the conditions, in which I am detained here. I am not liable for the claim, if proper facilities for contesting it are not allowed to me, I am afraid, a big sum of Rs 14000 along with costs and interest will be decreed against me. I therefore request as follows.

- a) To permit me to see my lawyer and relatives and give them necessary instructions for my defence.
- b) To permit me to correspond with lawyers and relatives in connection with case and also all papers and documents connected with the case.
- c) And in the meantime to request to the High Court to postpone for a temporary period of 15 days, for the reasons referred to in the above paragraphs so as to enable me to adequately prepare my defence and thus to save me from the risk. I am quite prepared to give the necessary security for the parole.

I have the honour to be,
Sir

Yours obediently,

P.M. Audikesavalu Naicker.*

1. See also Doc. 9 - in chapter I sect. C

23 Official Notings on interrogation methods (14.4.1943–25.4.43) (extracts)

File No. 44/2/43 – Home Poll (I)

[NAI]

In our letter No. 44/2/43 political (I) dated February the 13th¹ we left it to Provincial Governments to decide the question whether person detained under Defence Rule 129 should be left in police custody for purposes of interrogation and, if so, for what periods. Since then H.E. the Governor of the Punjab has drawn attention to the valuable results secured by police interrogations conducted by a qualified and expert staff in that Province and has suggested that more use might be made of these methods in other Provinces. I have had some discussion with H.M. and think we might send a further communication to provincial Governments, other than the Punjab, in continuation of our letter of February the 13th. We do not wish to encourage the extortion of information from persons detained under Defence Rule 129 by dubious methods, but I think we could suggest that the interrogation of such persons by a properly qualified staff may be regarded as a normal procedure when persons are detained on suspicion, if only to confirm the grounds for that suspicion. Apart from this judicious examination of important persons so detained may often result in the acquisition of valuable information provided that it is conducted by trained officers on reasonable lines. We might, therefore, enquire what the practice in each province is, whether they do possess special staffs for the purpose and, if not, whether they would consider the possibility of bringing such a staff into existence. I imagine that the personnel of such staffs would need very careful selection and considerable training and experience would be required, not only in the methods of interrogation but also in the selection of persons to be interrogated, before satisfactory results can be expected. A draft might be prepared on these lines and D.I.B. might be consulted on the subject generally and also on the point whether a suitable memorandum could be prepared on the correct methods of interrogation or whether it would be possible to arrange for other provinces to depute police officers of their own to receive instruction from the Punjab.

R. Tottenham

14.4.43.

A draft is put up.² D.I.B. should see with reference to the last sentence in Ad. Sec's note of 14.4.43. If the replies to the queries in that sentence are in the affirmative we could perhaps add the information in the draft.

D.I.B.

V. Sahay.

16.4.43

We have no memorandum suitable for Home Department's purposes and it is doubtful if one exists. G.S. Branch issued some instructions on the subject of interrogation to Forward Examination Centres and this case was held up while the relevant G.S. Branch papers were obtained and examined. They have not been found to be suitable for Home Department's requirements.

The fact of the matter is that interrogation is not a new method in police work and there is little doubt that most police organizations such as C.I.D.'s would be offended if it was suggested or, even implied, that they did not know how to do their job. Their offence would decrease and probably vanish altogether if a treatise on the subject was made available to them which they accepted as being of real value. It is difficult, however, to think of anyone who is capable of compiling such a work. It is true that some police officers are far more expert than others in making suspects tell the truth against their inclinations. Their power in this respect is derived from a knowledge of human nature resulting from years of police experience which enables them to pitch unerringly on the weak spots in the subjects' armour. It is doubtful, however, if even the best interrogators would be able to put much on paper which would be of vast assistance to others who have not their own knack.

Although in recent years the best interrogation result have been obtained by the Punjab C.I.D. other Provinces, e.g. Bengal and the United Provinces, also derive benefit from the same procedure. For this reason, and also because Punjab methods are (unjustly we think) criticised in certain quarters, it might be advisable not to hold the Punjab up as an example. If all the provinces will make an honest effort to make interrogation undoubtedly can be, it is within the competence of them all to attain success.

Signed For D.I.B.

18.5.43

Home Department.

D.I.B. U.O. No. 12/D.G./43 dated 18 May

Extracts from file 244/43 - Poll (I)

We propose to address Provincial Governments separately about detention and interrogation under D.R. 129, and it might be desirable to work into that some reference to the conditions police custody under that rule.

R. Tottenham, 17/4/43.

R.M. M(axwell), 18-4-43.

The draft at present does not contain any reference to the condition of police custody under rule 129. Does Addl. Secy. now wish a reference to be included.

Ahlam

20/5.

D.S. (1)

(1) I have spoken to Addl. Secy. The point made in his note of 17/4/43 should be brought into another reference to Provincial Governments. In which enquiries about conditions applicable to S.129 custody are made.

(2) I have added a little to the draft to bring out the points in the paper D.I.B. gave Addl. Secy' (placed above) which he may please remove.

V. Sahay.

22/5.

24: Gopal Marwari and others — Petitioners v. Emperor [Fazl Ali C.J., Manohar Lall and Meredith J.J. Special Bench (20 April 1943)]

AIR, Vol. 30, 1943, Patna, pp. 245–78

Criminal Revns. Applns. Nos 654, 662, 663, 770, 785, 786, 669, 717, 664, 666, 655, 715, 716, 701, 670, 718, 752, 802, 707 and 1942 and 73, 72 and 71 of 1943, Decided on 20th April 1943.

Meredith J. — I propose to deal with these applications in the order in which they have been argued. In the interests of brevity, and in view of the fact that so much has been already said in other decisions of this and other High Courts, I assume a knowledge of the terms of the Ordinance, its amendments, and the circumstances of its promulgation.

I take first a batch of cases, Criminal Revisions Nos 654, 662, 663 and 770 of 1942, which all arise out of the same decision of Mr N. Huda, Special Magistrate, who is also Sub-divisional Magistrate of Samastipur in the Darbhanga district. These applications have been argued upon different points by Mr Manuk and Mr S.C. Chakraverty.

The first point argued by Mr Manuk is one which has already been dealt with by a Division Bench of which I was a member. The present petitioners were arrested by the police on 3rd September 1942, under R. 132, Defence of India Rules, and sent in custody to the Sub-divisional Officer, who remanded them to *hajat* (police lock-up — ed.) up to 17th September. On the 17th the police report had not been received, and the Magistrate postponed the case to the 25th, asking the investigating officer to produce the prosecution witnesses on the date fixed. Similar orders were passed on 25th and 28th September and on 3rd October. On 5th October, the Magistrate recorded this order:

Police report received. The case is ready. To my file. Two prosecution witnesses present. Examined and cross-examined two prosecution witnesses. Charge framed. Tomorrow for defence.

Next day he examined the accused and some defence witnesses, and on the 7th he delivered his judgment, convicting the accused persons under R.56 (4), Defence of India Rules, and sentencing them to rigorous imprisonment for two years and a fine of Rs 500 each. The orders on the order-sheet up to and including the order of 3rd October were signed 'N. Huda' over the initials 'S.D.O.' From 5th October onwards the orders were simply signed 'N. Huda, Special Magistrate.'

Special Magistrates are constituted under S.9 of the Ordinance. The Ordinance came into force in Bihar on 21st August and the order of Government constituting Mr Huda, amongst others, Special Magistrate was made on 22nd August.

[Omitted: Meredith's judgment on 7 Criminal Revision appeals where the appeals are rejected. Many points of Criminal procedure connected with the jurisdiction of Special Magistrates are discussed — Ed.]

The next case (Criminal Revision No. 72 of 1943) comes from the Bihar Sub-division of the Patna District. On 24th September a charge sheet was received against the petitioners, whereupon the Sub-divisional Officer passed an order: 'To Second Officer for disposal as

Special Magistrate.' The latter tried, and on 2nd October convicted the petitioner under S.395, Penal Code, and imposed sentences of six or four years' rigorous imprisonment. In this case there are two orders under S.10, which must be considered. On 23rd August, before the charge sheet was received, Mr Archer, the District Magistrate, had authorized all Special Magistrates in the district of Patna to try certain specified offences; but the offence under S.395 of the Code does not figure in the list. It is conceded, therefore, by the learned Advocate General that this order could not confer jurisdiction upon the Special Magistrate to convict the petitioners in the manner he did.

On 27th August, however, there was a second order in these terms:

In exercise of the powers conferred on me by Notification No. 395 - C (P), dated 22nd August 1942, I hereby direct that all offences not punishable under the Indian Penal Code with death and which in the event of their resulting in a conviction, a sentence of not more than seven years' rigorous imprisonment will meet the ends of justice, shall be tried by Special Magistrates. (2) Offences punishable under the Indian Penal Code with death or which in the event of their resulting in a conviction, a sentence of more than seven years' rigorous imprisonment will be necessary for the ends of justice, shall be referred to me by the Sub divisional Officers for orders.

It is argued by Mr N C Ghosh for the petitioners that this order was so defective that it could confer no jurisdiction upon the Special Magistrates. The order is certainly a very badly drafted one. Apart from anything else, it ignores the fact that in many cases it might be impossible for the Special Magistrate to decide whether a sentence of seven years' imprisonment would meet the ends of justice until he had heard all the evidence. In other words, the Special Magistrate might well have to try the case before he could decide whether or not he had jurisdiction to try it.

There is, however, an even more serious defect. The order makes the Special Magistrates themselves judges of their own jurisdiction. It leaves them to decide in each case whether they have jurisdiction to try. This amounts to no less than a delegation to the Magistrates themselves of the power of passing the necessary order under S.10. This as I have already indicated, the District Magistrate had no power to do. It must be held therefore, that every Special Magistrate purporting to assume jurisdiction and try a case under this order really did so without any valid order under S.10 by the District Magistrate. This being so, the conviction of the petitioners by the Special Magistrate was without jurisdiction. It is quite true that in this particular instance it was the Sub-divisional Officer who actually selected the case for trial by a Special Magistrate, and directed the Second Officer to try it as such. That however, makes the position worse, not better. I would accordingly allow this application, make the rule absolute, and under S.491 direct that the petitioners must forthwith be released or brought to trial in accordance with law.

I now come to a batch of cases argued by Mr M.N. Pal, namely, Criminal Revisions Nos 670, 718, 752 and 802 of 1942 and 71 of 1943.

[*Omitted: Review of these six cases, only one of which succeed* - Ed.]

For convenience of reference I now summarize the decision of the Court.

Out of the 23 applications before us the following are successful:

Numbers 669, 701, 707, 753 of 1942, 71, 72 of 1943, while the remainder, namely the following, fail: of 1942 Nos 654, 655, 662, 663, 664, 666, 670, 715, 716, 717, 718, 752, 770, 785, 786, 802; of 1943 No. 73.

Fazl Ali C.J. — These are a number of applications arising out of convictions by Special Magistrates constituted under Ordinance 2 of 1942. Owing to the number of such applications that are coming before the Court and the fact that many points keep arising over and over again, I thought it desirable that there should be, so far as this Court is concerned, an authoritative decision once and for all upon the important points common to many such application. I have, therefore, constituted this Special Bench. The applications though argued by various lawyers, have been heard continuously. As I have already indicated, the same points are common to many of them, and it is, therefore, in my opinion, the most convenient course to deal with all of them in the same judgment. Owing to the fact that this must inevitably involve a somewhat lengthy order and the fact that so much has already been said about this Ordinance and the points arising in connexion with it, in various Indian High Courts, I desire to be as brief as possible consistently with dealing adequately with the principal points which have been urged.

I take first a batch of cases, Criminal Revisions Nos 654, 662, 663 and 770 of 1942, which all arose out of the same decision of Mr N. Huda, Special Magistrate, who is also Sub-divisional Officer of Samastipur in the Darbhanga district. The petitioners in these cases have been convicted for having committed an offence under R. 56 (4) of the Defence of India Rules and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs 500 each. They preferred an appeal before the Special Judge of Darbhanga, but the learned judge held that the appeal was not maintainable. They have now applied to this Court in revision and they also pray in the alternative for an order directing their release under S.491, Criminal P.C. on the ground that their trial by the Special Magistrate was without jurisdiction and their detention in prison is illegal and unwarranted by law.

[*Omitted: Arguments rejecting defence plea that the Special Magistrate had no jurisdiction to try these specific cases, and another plea that Ordinance 2 was ultra vires of the Govt. of India Act 1935 — Ed.*]

Criminal Revision Nos 701, 707 and 755.

The petitioners in Criminal Revision No. 701 were sent up by the police under custody to Mr Hoda, the Sub-divisional Magistrate under the Ordinance, on 27th September 1942. On 28th September the learned Magistrate noted in the order sheet: 'to my file' and proceeded with the trial and on the same day he convicted the petitioners under S.56 (4), Defence of India Rules, and sentenced them to undergo rigorous imprisonment for 18 months and to pay a fine of Rs 200 each. The petitioner Pasupati Tewari in Criminal Revision No. 707 was sent up by the police on 9th September 1942 and on 10th September 1942 Mr Hoda made the following note in the order sheet.

To My file. I will try the case as special Magistrate. Five prosecution witnesses present. Examined in chief five prosecution witnesses. Charge under R. 56 (4) D.I. Rules, framed against the accused who pleads not guilty. Cross-examined P.Ws. and discharged them. Examined the accused. The accused had filed petition stating that adjournment be given for adducing defence. I am not satisfied from the petition that it is necessary in interest of justice and hence disallowed. Judgment delivered. Accused convicted and sentenced to R.I. for two years and a fine of Rs 250 in default R.I. for one year under R. 56, D.I. Rules.

The petitioners in Criminal Revision No. 753 were sent up before Mr Hoda, Sub-divisional Officer of Samastipur on 15th September and the learned Magistrate convicted them on 16th

September 1942 under S.56 (4), Defence of India Rules, and sentenced them to two years rigorous imprisonment and a fine of Rs 300 each.

The common feature of these cases is that in all of them Mr Hoda tried the accused persons as a Special Magistrate and in each case the trial was concluded before 4th October. The point raised in all these cases is that Mr Hoda had no jurisdiction to try the petitioners as a Special Magistrate, inasmuch as the District Magistrate of Darbhanga issued no order under S 10 of the Ordinance until 4th October 1942. It appears that several orders were issued by the District Magistrate of Darbhanga relating to the Ordinance and one of the orders which was issued on 31st August was in these terms:

Mr S.W. Bilgrami, Mr H.C. Chakravarty, Deputy Magistrates, will act as Special Magistrates under the Special Criminal Courts Ordinance, for all cases in the Sadar Sub-division of this district. All cases will be made over to Mr Bilgrami, who will make over such cases as he may consider necessary to Mr Chakravarty for disposal.

The Sub-divisional Officers of Samastipur and Madhubani will act as Special Magistrates under the Act, within their respective jurisdiction. Mr Muhammad Usman, Deputy Magistrate, will try such cases under the Ordinance as may be made over to him by the Sub-divisional Officer of Samastipur. Babu Rajeshwari Prasad Varma and Babu Ramtahal Sinha, Sub Deputy Magistrates, will act as Summary Courts under Ordinance in respect of such cases as may be made over to them for disposal by their respective Sub divisional Officers.

We are concerned here with the second part of the order which has been underlined (here italicized). The next order was issued on 4th October and runs as follows:

Whereas under Ordinance 2 of 1942 the Government of Bihar in exercise of their power under S.4 of the said Ordinance have appointed a Special Judge for the district of Darbhanga, and where under S.9 of the said Ordinance the said Government have invested certain Magistrates in this district with powers of a Special Magistrate to try offences or classes of offences or such cases or class of cases the Provincial Government or a servant the Crown empowered by the Provincial Government in this behalf, may, in general or special or in writing direct I.R.N. Lnes, I.C.S. District Magistrate of Darbhanga, in exercise of the power conferred on me as a servant of the Crown that Ss. 5 and 10 of the said Ordinance do hereby by general order direct as follows. (a) All offences mentioned in Sch. (A) to this order will be tried by the Special Judge of this district (b) All offences mentioned in Sch. (B) to this order will be tried by the Special Magistrates in this district.

It should also further be noted that the Special Magistrates shall try the offences mentioned in Sch. (B) committed in the jurisdiction of the sub-division where they are ordinarily posted, unless otherwise directed by me by an order in writing.

Then follow two long schedules: Schedule (A) is headed 'Offences triable by a Special Judge' and contains five clauses which set out specifically the offences which were intended to be tried by the Special Judges. Schedule (B) is headed 'Offences triable by Special Magistrate' and contains four clauses which also set out with great precision the offences intended to be tried by the Special Magistrates. The question which arises in these cases is whether the order issued by the District Magistrate on 31st August can be treated as an order under S.10 giving jurisdiction to Mr Hoda, one of the Special Magistrates, to hold trials of any and every offence under the Ordinance. It appears that a Bench of this Court of which my brother Meredith was a member has held that inasmuch as the District Magistrate had to act in great haste and under great stress the order of 31st August though it was undoubtedly a defective order may be construed to be an order under S.10: see Criminal Revn. No. 20 of 1943. The contention put forward on behalf of the petitioners on the other hand is that this order cannot be construed

to be an order under S.10, because it does not specify what offences or classes of offences or cases or classes of cases were to be tried by the Special Magistrates. It is said that this order was merely an order which was preliminary to or a precursor of the subsequent order of 4th October which was in every sense an order S.10. The order in question, it is said, merely defined the jurisdiction of the various Magistrates within the Sadar and the Samastipur and Madhubani sub-divisions of the district and these Magistrates had evidently to await further orders which were to be issued after it had been decided by the District Magistrate as to what class of cases or offences should be tried by them under the Ordinance.

It is urged that unless this view was taken one would be forced to the conclusion that the District Magistrate intended that every kind of offence including even the offences which were wholly unconnected with the disturbances such as adultery, criminal mis-appropriation, etc., should also be tried by Special Magistrates; but if that was the intention it could have been clearly expressed by stating in so many words in the order that all offences under the Penal Code and other laws were to be tried by the officers nominated in that order. In my opinion, the contention put forward on behalf of the petitioner is a serious one and cannot be lightly brushed aside. The order of 31st August could not have been intended to mean that all criminal cases without any exception were to be tried by the Special Magistrates under the Ordinance firstly because the language of the order and especially used in the second part of it which relates to Samastipur sub division is inept and not quite clear and secondly because S.10 clearly implies that offences punishable with death cannot be tried by Special Magistrates. There is no such exception made in this order, and if the interpretation which is sought to be put on it is correct, then we must hold that the District Magistrate had directed the Special Magistrates to try even offences punishable with death. I do not, however, see any justification for putting such a construction upon the order as would constrain us to hold that the District Magistrate had directed something which he had no power to direct and that he had acted without due care. In the order of 4th October, it is definitely stated that it was issued by the District Magistrate under Ss. 5 and 10 by virtue of the power vested in him by the Government of Bihar under S.9 of the Ordinance and a list of offences was also given. If the order of 31st August was intended to be an order under S.10, then there should have been something in the order of 4th October to show that the previous order had been superseded and that the Magistrates concerned were no longer competent to try all cases but only offences mentioned in the later order. This view is confirmed by another order which was issued by the District Magistrate on 26th October and which runs as follows:

I, R.N. Lines, I.C.S., District Magistrate of Darbhanga, in exercise of the powers conferred on me as a servant of the Crown, under Ss. 5 and 10 of Ordinance No. 2 of 1942 promulgated by the Government of Bihar hereby direct that the *following amendment shall be made in my order dated 4th October 1942.* . . .

If the order of 4th October was intended to amend the order of 31st August, one would have expected some such words as those underlined (italicized) to have been used in that order also, but no such words are to be found there. However that may be, even apart from these subsequent orders it seems to me that the order of 31st August which is conceded to be a very defective order and which has to be construed on its own terms cannot be construed to be an order under S.10. It is suggested that the order was drawn up in an imperfect form, because the District Magistrate had to act in haste and under great stress, but we have looked at the orders passed by the District Magistrates of a number of other districts such as Manbhum, Monghyr, Bhagalpur, Ranchi, Motihari, Palamau, Saran, etc., who had to act under similar

circumstances and in all these orders we find a complete classification of the offences which were made triable by the Special Magistrates. A comparison of these orders with the order issued by the learned District Magistrate of Darbhanga on 4th October does lend support to the argument that the order which was really intended by him to be an order under S.10 was issued on 4th October. Upon this law I am constrained to hold that Mr Hoda had no jurisdiction to try the offences committed by the petitioners as a Special Magistrate because, on the date he tried the offences, he had not been empowered to try them by an order under S.10. I accordingly direct under S.491, Criminal P.C., that the petitioners should be released at once or brought to trial in accordance with law.

Criminal Revisions Nos 71, 670, 718, 752 and 802.

The facts of these cases are fully set out in the judgment of my brother Meredith and I entirely agree with the order proposed by him in the individual cases of this group.

[*Omitted. A long discussion on whether the Patna High Court had the power to issue a writ of certiorari -- Ed.*]

As to the other matters arising in these cases I am of the same opinion as my brother Meredith and I agree with the order which he proposes to make in regard to them in his judgment.

Criminal Revisions Nos 785, 786, 669, 717, 664, 666, 655, 715, 716, 72: So far as these revisions are concerned I agree with the conclusions of my brother Meredith as well as with the orders proposed by him.

Manohar Lall J. — I have the advantage of seeing in advance the judgments prepared by my lord the Chief Justice and by Meredith J. As I agree entirely with the reasonings and the conclusions of the judgment of my lord Chief Justice, and also in view of the great length to which these two judgments have already reached, I think it is undesirable that I should pronounce a judgment of my own which may, owing to the necessity of dealing fully with the numerous points raised, occupy an equally large space. But I would like to make two observations only. The first is that in my opinion it is unnecessary to decide whether this High Court has power to issue a writ of certiorari because as shown by my lord the Chief Justice even if we have the power this power has been taken away by S.26 of the Ordinance under consideration. The second observation I wish to make is that in the cases where we have held that the trial was without jurisdiction the accused should be released forthwith unless the authorities, after taking into consideration the nature of the offence said to have been committed by a particular accused and the nature of the evidence adduced by the prosecution, think it desirable that this accused should still be put upon trial before a Special Magistrate with jurisdiction.

K S

Orders accordingly.



25: Official Notings regarding detenu's privileges of letter writing etc. (dt 26.4.43–27.5.43) (extracts)

File No. 44/6/42 – Home Poll (I)

[NAI]

Extracts from the Minutes of the Nagpur Security Conference

Item 13 (c) – Security Prisoners

The Bengal representative raised the question of security prisoners of one province being permitted to correspond with those of another. In the Punjab such correspondence is not allowed while in Orissa, Madras and the Central Provinces correspondence is only permitted between families, and only on matters of a domestic nature. A reference was also made to the allowances of security prisoners, with particular reference to the permission given to them in some provinces to pool these allowances for common interests.

The conference expressed the opinion that the practice of allowing security prisoners to correspond with each other was dangerous and recommended that where necessary the rule governing the custody of such prisoners should be amended to include the prohibition considered necessary. The conference also wished the opinion to be recorded that it was unwise to permit any collective use of money or to allow expenditure on anything except within the category of immediate legitimate personal requirements.

Correspondence with S.P's in the provinces is permitted under the central Govt. S.P's order. Please see our letter of 16.4.42¹ on this point. This question should not perhaps be reopened.

[A/ 2. The allowances referred to are apparently the funds which S.P's are permitted to receive from outside sources. The pooling of such funds was agreed to in our memorandum on the treatment of S.P's which was forwarded to P.G's in Jan. 42. As the funds remain in the custody of the Supt. it is not clear how pooling of funds is harmful from the security point of view. Please see notes on page 52 in this connection.

3. No further communication was promised to provinces in respect of this item; the representative could perhaps explain to the members of the Conference at the next session the fact that the concessions of correspondence with other S.P's & pooling of funds were agreed to by the G/I after discussion with D.I.B. of Mr Joshi's recommendations and that they cannot very well be withdrawn now. D.I.B. may see.

Signed (illegible)

20-4-43

Policy on which points have been settled some time ago, and the conference has apparently produced no fresh arguments on this subject. It is suggested that no action is necessary at this stage. D.I.B. may see for remarks.

Ahlam

26.4.43.

Would D.I.B. kindly see them (c) of the proceedings of the Nagpur security Conference. . . .

Congress security prisoners are as a rule not allowed correspondence with any body, much

less with other security prisoners, unless they be close relation and the subject matter is on an entirely domestic or business nature.

As regards other security prisoners, they would be eligible under our own rules to correspond with each other.

All Correspondence is censored & we shall be obliged for some further information to show what was worrying the conference. What exactly the danger in letting one security prisoner write to another if the correspondence is censored. Is it the fear that the censoring arrangements made in the jails are not adequate and/or are unreliable; have any undesirable leakages occurred on account of correspondence between security prisons.

Regarding the other point made about the collective use of money, is anything further necessary in the light of /A/ the office note.

V. Sahay
15.43.

D I B

H D U O No. 446/42 - Poll (I) dated 15/43.

Item 13 (c) was not included in the agenda but was raised at the conference by Mr Ray, the Bengal representative, and Bihar was probably the object of his attack. Mr Ray spoke of misuse of collective funds and probably also of bad censorship which permitted undesirable communications to reach other provinces. It is understood that the feeling of the Conference was that provinces which are in any way lax should apply the necessary correct measures and something in the minutes would give Provincial S.Bs a starting point.

If Home Department wish to have more information as to what Mr Ray had in mind when he raised these questions, we will write to him and find out.

F.W. Jenkins
27.5.43.

There is no need for us to press matter at present. The minutes of this conference have gone to provl. Govt. & they may be expected to take the necessary action.

V. Sahay.
27.5.43.

i Not printed

26: Benoari Lal Sarma and others accused (petitioners) v. Emperor [Derbyshire C.J., Khundkar and Sen J.J., Special Bench (21 April 1943)]

AIR, Vol. 30, 1943, Calcutta, pp. 289-318

Criminal Revn. No. 81 of 1943, Decided on 21st April 1943 . . .

E.P. Mayer, S.C. Taluqdar, Joy Gopal Ghose and P.K. Bose — for Petitioners.

Amiruddin Ahmed and Serajuddin Ahmed — for the Crown

Derbyshire C.J. This rule was issued upon the District Magistrate of Jessore to show cause

why the conviction of the applicant and 14 other persons should not be set aside. The accused persons are all policemen and, according to the evidence, were directed to secure the person of a fellow policeman who was said to have become mentally deranged and instead of obeying orders they disobeyed them and behaved in a riotous manner. The District Magistrate, acting under powers conferred upon him by the Government of Bengal, directed a Special Magistrate, appointed under ordinance 2 of 1942, to try the case with the result that the Special Magistrate convicted the 15 applicants of offences under Ss.147, 149 and 332, Penal Code, and also under R.38 (1) (a) and (5)/R.34 (6b) (c) of the Defence of India Rules, committing a prejudicial act. He passed no sentence in respect of the offences under the Penal code, but as regards the offences under the Defence of India rules he sentenced all the accused each to two years rigorous imprisonment. The proceedings were taken under Ordinance 2 of 1942, S.26 of which prohibits the interference by this court with either the proceedings or the convictions. However, the convicted persons contend that the ordinance itself is *ultra vires* the law-making powers of the Governor-General and ask us to hold as such and, thereupon, to exercise our revision jurisdiction and set aside the convictions or, alternatively, to reduce the sentences.

The Magistrate was a First Class Magistrate specially designated as a special Magistrate under the ordinance. The ordinance itself was made on 31st December 1941 and published in the Gazette of India on 2nd January 1942. It recites that whereas an emergency has arisen which makes it necessary to provide for the setting up of special criminal Courts, the Governor General in the exercise of powers conferred upon him by S.72, Government of India Act, 1915, as set out in Sch.9, Government of India Act, 1935, makes and promulgates the ordinance. . . .

[*Omitted*: Enumeration of different sections of the Ordinance, and narration of the dates when by notification the Ordinance was made operative in Bengal – Ed.]

In the case in question the District Magistrate directed the Special Magistrate to try this case; the effect of this case being tried under the Ordinance is (if the Ordinance is valid and the requirements prescribed by the Ordinance have been complied with) to prevent the convicted persons from appealing to any appellate tribunal, whether in the High Court or elsewhere, and also to prevent the High court exercising its revisional jurisdiction. the contentions of the accused persons are that the Ordinance is invalid in (1) it delegates legislation and (2) that it ousts the jurisdiction of the High court in criminal matters contrary to S.223, Government of India Act, 1935, and (3) that it leaves it to the District Magistrate to say whether the accused shall have the rights of appeal or revision which the ordinary law provides.

The case is an important one and has been argued at great length. . . .

[*Omitted*: Judgement rejecting the contention that (a) the Government of India could not delegate to Bengal government the power to judge when the Ordinance was to be brought into operation (b) a Governor General's Ordinance could not take away the High Court's revisional jurisdiction over the Magistrate's Courts in Jessore – Ed.]

The third contention of the applicants, and the one which has caused me a great deal of difficulty, is that, although the Governor-General might set up Special Courts and prescribed the class of case to be tried in those Courts, he has not prescribed the classes of offences and cases but has left it to the Provincial Government, on adopting the Ordinance, to prescribe the classes of cases and has even permitted some servant of the Crown, who may be empowered in that behalf by the Provincial Government, to prescribe the classes of cases. It is said that

this is delegating legislation, and that there is not power in the Governor-General to delegate legislation in this way. The position is a difficult one for us to deal with because the Special Courts in question do not come within the superintendence of the High Court by virtue of S.26. Circulars and directions have been forwarded by Government to District Magistrates – some marked confidential and some marked secret – with instructions as to how the Special Courts were to be worked; this Court had not received copies of those instructions until many months afterwards – sometimes six months or more. However, from such material as I have been able to gather, the position is as follows: The Ordinance itself was adopted by the Government of Bengal on 3rd April 1942, when by a Gazette Notice No. 3529 P of 3rd April 1942, the Governor was pleased to declare the Ordinance to be in force in the province of Bengal with effect from the date of publication. On the same date by a Gazette Notice No. 3531P certain District Judges in the coastal and border areas were nominated Special Judges under S.4 of the Ordinance. By another Gazette Notice No. 3532P of the same date – 3rd April 1942 – all First Class Magistrates in the same coastal and border areas were, who have exercised powers as such for not less than two years, invested with the powers of special Magistrates under S.2 of the Ordinance and by a further Gazette Notice No. 3534P of the same date there is the following announcement:

In exercise of the powers conferred by S.10, Special Criminal courts Ordinance, 1942 (Ordinance No. 2 of 1942) the Governor is pleased to empower the District Magistrates of the districts of Chittagong, Noakhali, Tippera, Bakerganj, 24-Parganas, Midnapore and Khulna to direct within their respective districts by general or special order in writing which offences or classes of offences or cases or classes of cases other than offences or cases involving the offence punishable by death under the Indian Penal Code shall be tried by a Special Magistrate

By a gazette Notice No. 3535P of 3rd April 1942, the following was provided:

In exercise of the power conferred by S.5 of the Special Courts Ordinance, 1942 (Ordinance 2 of 1942) the Government is pleased to empower the District Magistrates of the districts of Chittagong, Noakhali, Tippera, Bakerganj, 24-Parganas, Midnapore and Khulna, to direct within their respective districts by general or special order in writing which offences or classes of offences or cases or classes of cases under the Indian Penal Code shall be tried by a Special Judge.

On 25th June 1942, by similar Gazette notices (two of which viz. Nos 9578P and 9579P are set out earlier in this judgement) corresponding powers were given to Special Magistrates and district Judges in other areas of the province similar to those set out under Notification No. 3584P and No. 3535P. On or about 26th June 1942 a circular was issued by a Secretary of the Government of Bengal giving instructions as to how the District Magistrates should exercise their powers. Two schedules were sent out with it one of them setting out a list of the offences which might be tried by Special Magistrates and the other a list of offences which might be tried by Special Judges. Those lists are very long and although not identical are nearly so. They are set out as an appendix to this judgment. They comprise a very large number of the offences under the Penal Code, some of which could have nothing to do whatever with the special conditions prevailing in the province, as well as a list of offences under special statutes e.g., the Defence of India Rules and various Police Acts. Other circulars have been sent out since. It is only comparatively recently that copies of these circulars and schedules have been sent to this Court for its information.

It appears that the present case was tried by a Special Magistrate as a result of a specific order to that effect by the District Magistrate. What has happened in other cases this court

does not know. I have made enquiries of one District Judge and found that the following procedure has been adopted in that district. The District Magistrate made an order to the effect that 'cases arising out of the recent disturbances shall be tried by Special Magistrates.' Thereupon, cases were brought before Special Magistrates accompanied by a certificate from the police to the effect that the cases arose out of the recent disturbances and thereupon the Special Magistrate dealt with them under the ordinance. This is extremely unsatisfactory from the point of view of the subject. It makes the police the arbiter of a man's rights as to how he shall be tried. Before the ordinance was set up, any person charged with an offence when brought before a court know exactly what class of Court he would be tried in, and what rights he had if the Court made an error in procedure or in the determination of the facts or in the law applicable to the case. As far as he was concerned, the law and his rights under it were certain. Under the ordinance a man may be brought before a Magistrate charged with an offence and it is left to the District Magistrate to say whether that man should be tried by the ordinary courts and have the ordinary rights of appeal and revision under the Criminal Procedure Code and the High Court's powers under its Letters Patent or whether he should be tried by a Magistrate sitting as a Special Magistrate with very limited rights of appeal and no right as to revision. The man's rights as regards appeal and revision are not predetermined by law but are left to the discretion or order of the District Magistrate and, in some cases, practically to the discretion of the police.

Although the ordinary criminal Courts at all material times since 3rd April 1942 have and still do function and although the Criminal Procedure Code has not been repealed and although the substantive criminal law stands as it did before the Ordinance, there are now two sets of Courts, the ordinary criminal Courts and the Special Criminal Courts working side by side and no man knows which Court he may be tried in—that is left to the District Magistrate nominally to decide: in fact it might be decided by the police. As I have said previously I am of the opinion that in a grave emergency like the present it is competent for the Governor-General to set up temporary Special Criminal courts, and for similar reasons I am of the opinion that it is competent for the Governor General in the emergency to prescribe the offences and persons that should be tried in those Special Courts even to the ouster of the ordinary Courts. That follows from the legislative powers that the Governor General has under S.72, Government of India Act, 1915, and S.102 of the Act of 1935. However, that is not what the ordinance has done. It has first left it to the Provincial Government to set up the Special Courts authorized in the ordinance where it thought fit; I think that is a proper exercise of the Governor-General's powers: it is not delegating legislation. Nothing more needed to be done but for the Provincial Government to bring the ordinance into operation and appoint Magistrates and Judges. That is conditional legislation within the decision in (1878) 3 A.C. S.89. So far as at present advised, I think that is valid.

The ordinance, however, leaves it to the Local Government or to some officer of the Local Government empowered by the Local Government in that behalf to direct in writing what offences or classes of offences and, moreover, what cases or classes of cases—a different matter—shall be tried by the Special Courts. The Code of Criminal Procedure still stands as a whole and is operative in the ordinary criminal Courts every day; in it are certain provisions which prescribe how certain offences shall be tried and what rights of appeal the convicted person has. For instance, an offence may be committed under S.304, Penal Code—culpable homicide which is less than murder. Schedule 2 of the code prescribes that cases under S.304, Penal Code, shall be tried by a court of Session which may be a High Court or an ordinary

Court of Session. Section 267 of the Code provides that all trials under chap. 29 (which deals with trials before High court shall be by a jury. Section 268 provides that all trials before a Court of Session shall be tried by jury or with the aid of assessors. Those two sections give definite rights to the subject and they are not repealed by the ordinance. Again, S.275 of the Code prescribes that in a trial by jury in a Court of Session a person not being a European or an American the majority of the jury shall, if the person so desires, consist of persons who are neither Europeans nor Americans. Again, S.276 (1) enacts that in a trial by a jury in a High Court or in a Court of Session a European or American accused may if he so requires be tried by a jury of Europeans or Americans.

There is nothing in the ordinance directly or indirectly repealing those provisions and they stand as part of the statute law of the land. Trial by jury continues in this province today. However, under the ordinance, the Local Government or a servant of the Crown empowered in that behalf by the Local Government may at any time by general or special order in writing direct a person charged under S.304 to be tried either by a Special Judge or a Special Magistrate, if that happens the Government of Bengal acting in its administrative capacity or a servant of the Crown again acting in an administrative capacity is taking away the rights of the subject under the code of Criminal Procedure to be tried by a jury-an Indian by Indians, a European or an American by Europeans or Americans. If such direction is valid, it amounts to a repeal in that instance of one or more of the sections of the Code of Criminal Procedure I have mentioned. That is legislation or it is invalid.

There are many offences in the Penal Code which are by sch.2, Cr. P.C. triable only by Courts of Session or in the High Courts and a similar position as under S.304, Penal Code, will arise in many of them. Those are, in my view, particular and the more striking and obvious instances of the more general position. The Penal Code is a statute which declares that certain acts and omissions are offences against the State; it declares the obligations of the subject towards the State with the respective penalties for breach thereof. The Criminal Procedure code prescribes how the breaches of those obligations shall be ascertained in the Courts and in so doing gives to the subject certain rights secured by that statute which subsist for the protection of the subject until they are taken away by the proper legislative authority. some of the most important of those rights (in addition to trial by jury) are the right of appeal and the right of revision by superior Courts including the High Courts.

In the Special Courts which are temporary and established to meet the grave emergency, the rights of the subject are heavily cut down in the interests of the security of the State. The subject who commits a crime is not, however, ipso facto or by the Ordinance itself brought within the jurisdiction of the Special Courts. Two men may commit the same kind of offence in the same district; one may be tried in the ordinary Courts and have the ordinary rights of appeal and revision if convicted; the other may be ordered by written direction of the Provincial Government or the District Magistrate, whose discretion is absolute and decision final (S.14), to be tried by the same Magistrate or Judge in the special Courts and have no or little rights of appeal or revision under the code of Criminal Procedure. In effect it is Provincial Government or the District Magistrate acting not in a judicial capacity but in an administrative capacity, that deprives the subject of his right under the Code and repeals its valued provisions as far as he is concerned. That, in my view, is repealing the code of Criminal procedure in part in that instance legislation ad hoc for the man's case.

Under the Government of India Act, the Provincial Government may legislate by or through an Act passed by both Houses and assented to by the Governor or in the proper case by a

Governor's Act or Ordinance (see Ss. 88, 89 and 90, Government of India Act), but as far as I am aware in no other way. A servant of the Crown not being the Governor-General or the Provincial Governor has no authority at all to legislate unless he is specially empowered in a limited manner to do so by some Act of the Legislature, as for instance in the making of a rule under a statute. This rule-making power originates and derives from the practice in Parliament where in modern times, especially in war time, it is extensively used. Presumably, Parliament intended the Central Indian Legislature to have the same powers for they are frequently exercised. It may be that Parliament has intended the Provincial Legislature to have the same powers. No question here arises to the exercise of those rule-making powers. When such rules are made they are laid before the Legislature and/or published so that all concerned may know them, and all concerned affected alike. Whether the Governor-General has the power to delegate legislation by rule-making is another matter. Section 72, Government of India Act, 1915, provides that the Governor-General may make Ordinances and 'any Ordinances so made shall . . . have the like force of law as an Act passed by the Indian Legislature'. It does not provide that rules made under each Ordinance shall have the like force as an Act passed by the Indian Legislature. Any practical difficulty can be surmounted by the Governor-General enacting the rules as an Ordinance after they are made. That, and the fact that the Governor-General's Ordinance is not a thing of the same derivation and kind (although it may have the like force of law) is an argument against the power to make rules under an Ordinance. Be that as it may, no such rules support to have been authorized or have indeed been made under the Ordinance. If they had, they would have been published to all concerned, and have been the same for all concerned. This is a case of delegation of authority to be used ad hoc. I see no authority in S.72 for that; the power to legislate belongs to the Governor-General. This conclusion is borne out by another consideration. The Secretary of State, under S.13, Government of India Act, 1935, issued the instrument of Instructions to the Governor-General. Section 13 (2) provides that the validity of anything done by the Governor-General shall not be called in question on the ground that it was done otherwise than in accordance with any Instrument of Instructions issued to him.

The Instrument of Instructions is public, and from it, it is apparent that by Para 27

"Our Governor-General shall not assent in Our name to but reserve for the signification of Our pleasure, any Bill of any of the classes specified, that is to say, (b) any Bill which in his opinion, would, if it became law, so derogate from the powers of the High Court of any province as to endanger the position which these courts are by the said Act (Government of India Act, 1935) designed to fill."

The Ordinance in question is not an Act which began as a Bill: it is emergency legislation; so that it may well be that Para 27 of the Instrument does not apply to it. The Instrument of Instructions does, however, show that the position of the High Courts is one of special interest to the Crown and one where the Governor-General's powers with regard to it are not to be exercised without special consideration. Can it be supposed that in making an Ordinance which affects the High Courts, the Governor-General can, in the absence of clear authority, delegate his powers to others to exercise? Such a consideration supports the view that at any rate where the jurisdiction of the High Courts is concerned, delegation of the Governor-General's powers, not being expressly permitted, cannot be implied. The same considerations are relevant as regards a Governor's Ordinance. The delegation of power to the Local Government or an officer of the Crown to direct which offences or classes of offences or cases or classes of cases shall be tried by the Special Courts results in a curious position where the

High Court in Calcutta is concerned. The High Court was constituted not under any Government of India Act but by the grant of Letters Patent by the Crown under the High Courts Act of 1861 (24 and 25 Vict. Cap. 104). This statute-S.9-continued the criminal jurisdiction that the Supreme Court had in Calcutta. The Letters Patent-Cl.15-provides that:

The High court shall have original criminal jurisdiction within the local limits of the ordinary original civil jurisdiction and also in respect of all such persons both within the limits of the Bengal Division of the Presidency of Fort William and beyond such limits (as are therein set out).

This means that the High Court has original criminal jurisdiction over all persons in the area bounded by the Circular Road and the west bank of the river Hooghly. At present the High court holds its sessions five times a year in this court and tries with a jury persons who commit serious crimes within its jurisdiction. Under the Ordinance an officer of the Bengal Government in the Secretariat or the Chief Presidency Magistrate (who is normally subject to the High court's jurisdiction) can by an order in writing order any offence alleged to have been committed within or a criminal case arising within the area bounded by the Circular Road and the river Hooghly he pleases, to be tried by a Special Magistrate or a Special Judge, whether the offence arises out of the emergency or not, in ouster of the Court's jurisdiction given to it under the High Courts Act of 1861 and the Letters Patent granted by the Crown, and so set aside the provisions of clause 15. Clause 44, Letters Patent, provides that the Letters Patent are subject to the legislative powers of the Governor-General in Council and also of the Governor-General in council under S.71, Government of India Act, 1915, and also of the Governor-General in cases of emergency under S.72 of that Act and may be in all respects amended and altered thereby.

By Cl.44 the Governor-General may, in an emergency take away the High Court's original criminal jurisdiction; but no one else is so authorized, and there is nothing in the wording of Cl.44 to suggest in any way that such powers might be delegated to someone else. In Bengal there has been double delegation — once by the Governor-General to the Government of Bengal and then by the Government of Bengal to the District or Presidency Magistrates. There is no restriction in the Ordinance or in the Gazette notices of 3rd April or 25th June as to the offences or cases triable under the Ordinance. Accordingly, if the Ordinance is valid each District Magistrate and the Chief Presidency Magistrate may direct, if they so desire, all cases in their several districts to be tried by Special Magistrates or Special Judges with the result that except within the very narrow limits permitted by the Ordinance the jurisdiction of the High Court both in Calcutta and throughout the province may be out set for the time being in criminal matters — a very serious matter both from the point of view of the subject and the Court.

If the Ordinance itself had directed such ouster of jurisdiction, it would have been apparent on the face of it, and the Governor-General would have known that this was taking place, as would the court and the public. The Governor-General might then well have considered whether it was a matter which came within the spirit of the directions in Art. 27 of the Instrument of Instructions. The present position may result in an indefinite ouster of jurisdiction of the High Court, and an indefinite ouster of the subject's rights without either the Governor-General or the court or the public being aware of the extent of it. The effect upon the administration of justice may be grave. It has already given the Court a great deal of anxiety and has given rise to serious complaints being made in the Bengal Assembly as to the use of this Ordinance. In the original instructions sent out by an officer of the Government of Bengal

on 26th June 1942 (which the Court was not apprised of until January 1943), this ouster was made possible over a very large section of the criminal law. Since this present case has been started the Court has received another circular from the Government of Bengal which intimates that District Magistrates are instructed to use the Ordinance only in cases of hoarding and profiteering. From the public point of view, that is undoubtedly a step in the right direction although it may be retraced at any time; but it leaves the High Court without any control over profiteering and hoarding offences. It is notorious that proceedings in respect of profiteering have been relatively few and the sentences imposed have been very light. There is no judicial or other authority at present to revise these sentences and enhance them.

The Ordinance is of course an emergency measure of limited duration, but it is difficult to say that because of that the power of ouster of jurisdiction should be delegated in the way it has been. It is possible, if the advice of those with special knowledge and experience in the administration of the criminal law is sought, to effect in the ordinary Courts the same purpose, viz., the swift, stern and even-handed punishment of serious offences against the State in an emergency, by a relatively small alteration of the Criminal Procedure Code and other Acts. I have come to the conclusion for the reasons I have given that as the Ordinance in Ss.5, 10, 14 and 16 empowers persons other than duly authorized Legislatures constituted under the Government of India Act, 1935 to repeal *ad hoc* certain provisions of the Criminal Procedure Code and of the Letters Patent of the High Court, it is so far invalid. I am therefore of the opinion that the trial of the applicants which has been by a Special Magistrate under the direction of the District Magistrate, acting in pursuance of S.10 of the Ordinance and the authority delegated to him by the Provincial Government, is void. In my opinion, this conviction should be set aside and the applicants released, re-arrested and tried in the ordinary courts according to the ordinary process of law.

[Omitted: Schedule of cases triable by a Special Magistrate and Schedule of cases triable by a Special Judge — also omitted is Justice Khundkar's views — Ed.]

Sen J. -- The petitioners have been convicted of having committed various offences punishable under the Penal code and the rules framed under the Defence of India Act and sentenced to undergo rigorous imprisonment for a period of two years. The trial was held in accordance with the provisions of ordinance 2 of 1942 by a Special Magistrate appointed under that ordinance. Against this order of conviction they moved this Court and obtained this rule. The only question argued was that Ordinance 2 of 1942 was 'ultra vires' of the Governor-General to make. We did not enter into the merits of the case for obvious reasons. If the ordinance is ultra vires it is not necessary to consider the merits; the convictions and sentences must be set aside, whatever the merits of the case may be, as the Court trying the petitioners was no Court at all. If the ordinance is 'intra vires' we are debarred by S.26 of the Ordinance from interfering with the decision of the Special Magistrate. I shall now deal with the only question raised before us. The contention of Mr Meyer for the petitioners is that Ordinance 2 of 1942 is 'ultra vires' of the Governor-General to make and he relies upon two broad grounds for this view. They may be stated thus: (1) Although the Government of India Act of 1935 has given the Governor-General the power to make ordinances in case of emergency, the Governor-General has no power by such ordinance to affect the jurisdiction of the High court of the law administered therein, nor may he by ordinance alter or affect the powers of the Judges of a High Court in relation to the administration of justice in the court. (2) Even if he has such powers, ordinance 2 of 1942 is nevertheless 'ultra vires' and

invalid by reason of certain provisions therein contained. In other words, he argues that the Ordinance contains within itself the elements which destroy its validity.

I shall now deal with the first ground. Mr Meyer's argument as I understand it may briefly be summarized thus. Section 110 (b) (ii), Government of India Act of 1935, says that nothing in the Act shall be taken to empower the Federal Legislature or any Provincial Legislature to make any law amending any provision of the Act except in so far as is expressly permitted by a provision of the Government of India Act of 1935 Section 223. Government of India Act 11935 lays it down that the jurisdiction and powers of the High Court as it existed immediately before the commencement of Part 3 of the Government of India Act of 1935, shall be maintained subject to the provisions of any Order in Council or of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by the Government of India Act of 1935. It is thus clear that express permission is given by S.223 to the appropriate Legislature to legislate with respect to the jurisdiction and powers of the High Court by virtue of the powers conferred on that Legislature by the Government of India Act. The Governor-General in case of emergency is empowered by S.72 of Sch.9, Government of India Act of 1935 to make and promulgate ordinances having the force of a law passed by the Indian Legislature. This, however, does not mean that the Governor-General can pass Ordinances affecting the jurisdiction and powers of the High Court. The ordinance has the like force of a law passed by the Indian Legislature, but it is not an Act of the Indian Legislature and S.223 refers only to an Act of the appropriate Legislature. Further sec. 110 (b) (ii) requires an express permission to be given to the Legislature to amend any provision of the Government of India, Act. While S.223 gives an express permission to the Indian Legislature to enact laws in respect of the jurisdiction and powers of the High Court, no such express permission is given to the Governor-General when he is vested with the power to make ordinances having the force of law. That being so, there is no power in the Governor General to take away any portion of the jurisdiction of this court by an Ordinance. The answer to this argument is, in my opinion, to be found in S.311 (6), Government of India Act of 1935. That section runs as follows:

Any reference in this Act to Federal Acts or laws or Provincial Acts or laws, or to Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an ordinance made by the Governor General or a Governor General's Act, or, as the case may be, to an ordinance made by 'Governor or a Governor's Act'.

Thus, the words 'any Act of the appropriate Legislature' occurring in S.223 must be construed as including a reference to an Ordinance made by the Governor-General. the Governor-General is thus given express permission to make ordinance affecting the jurisdiction of this Court. Mr Meyer contended that we should not interpret the words 'Act of the appropriate Legislature' in this fashion because those words in S.223 are followed by the words 'enacted by virtue of powers conferred on that Legislature by this Act'. He contends that the use of the word 'Legislature' with a capital L in this clause indicates that only the Federal and Provincial Legislatures are being referred to and that the word 'Legislature' cannot be taken to mean the Governor-General as ordinance maker. I am not impressed by this argument. The word 'Legislature' means an authority empowered to make laws. The Governor-General when he promulgates and ordinance makes a law and is therefore in that capacity a Legislature.

There is another answer to this argument of Mr Meyer. Clause 44, Letters Patent, of this Court says that the provisions of the Letters Patent are subject to the legislative powers of the

Governor-General in cases of emergency under S.72, Government of India Act of 1915 and may be in all respects amended and altered thereby. Mr Meyer admitted that if S.72, Government of India Act of 1915 were still in force the Governor-General in cases of emergency would have complete power to make ordinances affecting the jurisdiction of this Court. But he says that the entire Government of India Act of 1915 has been repealed by the Government of India Act of 1935 and that the present S.72 of Sch.9, Government of India Act of 1935, although it is in the same terms as S.72, Government of India Act of 1915 is not in law the same thing as S.72, Government of India Act of 1915 and therefore it cannot have the effect given to S.72 of the Act of 1915 by Cl. 44, Letters Patent. It is quite true that the Government of India Act of 1915 has been repealed as a whole by the Government of India Act of 1935. Section 317, Government of India Act of 1935, however, re-enacts S.72, Government of India Act of 1915 in Sch.9. Now, what is the effect of this re-enactment? Mr Ahmad appearing on behalf of the Crown draws our attention to the Interpretation Act of 1889 (52 and 53 Vict. Ch.63). Section 38 of that Act says that where an Act is repealed and any provision of the repealed Act is re-enacted with or without modification, references in any other Act to this repealed provision shall, unless the contrary intention appears, be construed as references to the provision so re-enacted. Therefore, the reference in Cl.44, Letters Patent to S.72, Government of India Act of 1915 must be construed as being a reference to the provisions of S.72 of Sch.9, Government of India Act of 1935. If this is done, it becomes abundantly clear that the Governor-General has power to pass ordinances affecting the jurisdiction of this court.

Mr Meyer sought to meet this argument by saying that S.38, Interpretation Act, dealt only with a reference in an Act to a repealed provision which has been re-enacted, but it did not deal with a reference to a re-enacted repealed provision in something which was not an Act. He pointed out that the Letters Patent was not an Act and that therefore the reference in the Letters Patent to a provision which has been re-enacted will not be affected by the rule laid down in S.38, Interpretation Act. In my opinion, this argument cannot prevail. It is true that the Letters Patent is not an Act, but it is granted by the Sovereign by virtue of an Act passed by the Parliament and it should be construed in the same way as an Act. Further, even if S.38, Interpretation Act, does not apply in terms to the Letters Patent, I have no hesitation in saying that the principle underlying S.38 should be applied in construing Cl.44, Letters Patent. In connexion with the other argument dealt with in the earlier part of this judgment, viz., that the Governor-General is not a Legislature I may point out that S.18, Interpretation Act, defines the expression 'Legislature' when used with reference to a British possession as meaning 'the authority competent to make laws to meet the emergency. He is therefore a Legislature. In view of what has been said above I am of opinion that the first ground urged on behalf of the petitioners must fail.

The second ground for inviting us to hold that the Ordinance is 'ultra vires' and invalid is a substantial one. There are three broad reasons urged in support of this branch of the argument. Firstly, Mr Meyer contends that, although the preamble states 'whereas an emergency has arisen which makes it necessary to provide for the setting up of special Criminal courts' nevertheless it is unmistakably clear from the very provisions of the Ordinance that the Governor-General was not of opinion that an emergency which necessitated the promulgation of this Ordinance existed. He then argues that if the Governor-General did not think that such an emergency existed he had no power to make the Ordinance. Now, let us examine what powers are given to the Governor-General to make and promulgate ordinances. These powers are to be found in S.72 of Sch.9, Government of India Act, 1935, which is as follows:

The Governor-General may, in cases of emergency, make and promulgate Ordinances, for the peace and good government of British India or any part thereof and any ordinance so made shall, for the space of not more than six months from its promulgation have the like force of law as an Act passed by the Indian Legislature; but the power of making Ordinances under this section is subject to the like restrictions as the power of the Indian Legislature to make laws; and any ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature and may be controlled or superseded by any such Act.

There has been an amendment of the section by an Act of Parliament, viz., the India and Burma (emergency Provisions) Act of 1940 (3 & 4 Geo. VI, Ch.33), which for the period mentioned in S.3 of that Act removes the limit on the period during which an Ordinance may be in force. This amendment however, does not in any way touch the particular question now under discussion. The words of S.72 make it clear that the Governor-General has been given the power to make an Ordinance only under a certain specified condition and only for a specified purpose. The prerequisite is the existence of an emergency and the specified purpose is to ensure peace and good government. In other words, he cannot make and promulgate an ordinance unless there is an emergency which calls for the exercise of his special legislative power given by S.72 and his Ordinance must be a measure designed to ensure peace and good government endangered by the emergency. It follows from this that an Ordinance made and promulgated when there is no emergency which necessitates the exercise of this special legislative power of the Governor-General is *ultra vires*. Again, the words of the section indicate that an Ordinance passed for purposes other than the peace and good government of British India would likewise be *ultra vires*. Mr Ahmed on behalf of the Crown contended that it is not for a Court of law to decide whether or not an emergency which necessitates the promulgation of the Ordinance exists. Nor is it for a court of law to decide whether or not the Ordinance conduces to peace and good government; the only person to judge these matters is the Governor-General. He argued that if this view be accepted, this Court cannot go into the question whether or not the Governor-General was of opinion that an emergency which necessitates the promulgation of this Ordinance exists. In support of this view, he referred to well-known decision of the Judicial committee in 58 I.A.169. In my opinion, the decision in 58 I.A. 169 does not support the argument of Mr Ahmad. let us examine what the Privy Council have said in that case. This is what was said:

The petitioners ask this Board to find that a state of emergency did not exist. That raises directly the question who is to be the judge of whether a state of emergency exists. A state of emergency is something that does not permit of any exact definition. It connotes a state of matters calling for drastic action which is to be judged as such by someone. It is more than obvious that the someone must be the Governor General and he alone. Any other view would render utterly inept the whole provision. Emergency demands immediate action and that action is prescribed to be taken by the Governor-General. It is he alone who can promulgate the Ordinance.

Yet, if the view urged by the petitioners is right, the judgment of the Governor-General could be upset either (a) by this Board declaring that once the Ordinance was challenged in proceedings by way of *habeas corpus* the Crown ought to prove affirmatively before a Court that a state of emergency existed or (b) by a finding of this Board after a contentious and protracted enquiry that no state of emergency existed and that the Ordinance with all that followed on it was illegal. In fact, the contention is so completely without foundation on the face of it that it would be idle to allow an appeal to argue about it.

It was next said that the Ordinance did not conduce to the peace and good government of British India. The same remark applies. The Governor-General is the judge of that.

Let us analyse what these observations mean. They certainly do not mean that the power of the Governor-General to promulgate an Ordinance is absolutely untrammelled. To say this would be to nullify the express words of S.72 which stipulate that it is only in cases of emergency that the Governor-General can make and promulgate an Ordinance. All that the Judicial committee has said in this connexion is that, if the Governor-General judges that an emergency exists the Courts are not competent to say that it does not exist. In other words, an emergency exists if the Governor-General thinks that an emergency exists. It follows from this view that the Governor-General has power to promulgate an Ordinance only if he thinks or judges that there is an emergency which necessitates the promulgation of the Ordinance. To put it in another way, even if an emergency exists and the Governor-General does not think there is an emergency he cannot promulgate an Ordinance; on the other hand, if there is really no emergency but the Governor-General thinks there is an emergency he has the power to promulgate an Ordinance. It is what the Governor-General thinks that matters. The Privy Council has nowhere said that the court is not permitted to decide whether or not the Governor-General has judged that there is an emergency. What the Privy Council has said is that if the court finds that the Governor-General has judged that there is an emergency the Court is bound by that judgment. The Court must, however, decide when called upon to do so, whether or not the Governor-General has in fact judged that there is an emergency. It is no argument to say that the Court cannot delve into the mind of a person. This will certainly not be the first time that the Court is called upon to determine the state of a man's mind. The Court has to do this constantly and the Evidence Act abounds in provisions which demand that the court shall determine the state of mind of a person. The state of a man's mind is a question of fact capable of being determined like any other question of fact. Now, if from the very provisions of the Ordinance it is established that the Governor-General does not think that there is an emergency is not this Court bound to declare that the Ordinance is ultra vires? I have no doubt that this Court is so bound. Suppose, in this Ordinance the Governor-General had said: 'I do not think there is an emergency which necessitates the promulgation of this Ordinance but nevertheless I promulgate it'. Obviously, the ordinance would be ultra vires and the Court would have power to declare it to be so. If he had said, 'I do not think there is an emergency which necessitates the promulgation of this Ordinance but nevertheless I promulgate it because at some future date an emergency may arise which may require such an Ordinance', would that Ordinance be valid? In my opinion it would be equally invalid as the Ordinance just before mentioned. The Governor-General, it is true, is the sole judge to determine whether or not an emergency exists, but for the purposes of promulgating ordinances he is not vested with prophetic powers which would enable him to legislate with respect to some emergency which has not arisen. His powers of legislation are limited to making an ordinance when he thinks an existing emergency demands it. Emergency legislation is something drastic and immediate—it is not contemplative legislation.

An emergency is nowhere defined in the Government of India Act, 1935, but the meaning given to the word may be gathered from S.42 (1) of that Act which makes provision for emergency legislation by Ordinance by the Governor-General. The section is not in force as it occurs in Part 2 of the Act which is to come into force when Federation is established. For the transitional period, S.72 of Appendix 9 takes the place of S.42 so far as emergency legislation is concerned. Section 42 runs as follows:

If at any time when the Federal Legislature is not in session the Governor General is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such ordinances as the circumstances appear to him to require.

Instead of using the words 'in case of emergency' which are used in S.72 of Sch.9 the words used are: 'The Governor-General is satisfied that circumstances exist which renders it necessary for him to take immediate action.' this is what is meant by 'emergency'. The Judicial Committee in 58 I.A. 169 has given the same meaning to the phrase in case of emergency. This is also the dictionary meaning of the word 'emergency'. An emergency according to the Oxford Dictionary is 'a sudden juncture demanding immediate action' or whether he was 'satisfied that circumstances existed which rendered it necessary for him to take immediate action.' This is what the Ordinance says:

"Whereas an emergency has arisen which makes it necessary to provide for the setting up of Special Criminal Courts:

Now, therefore, in exercise of the powers conferred by S.72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following Ordinance:

1. (1) This Ordinance may be called the Special Criminal Courts Ordinance, 1942. (2) It extends to the whole of British India. (3) It shall come into force in any Province only if the Provincial Government being satisfied of the existence of an emergency arising from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the official gazette, declares it to be in force in the Province, and shall cease to be in force when such notification is rescinded:

Provided that any trial or proceeding which was pending at the time of such rescission may be continued and completed as if the provisions of this ordinance were still in force."

The preamble does say that an emergency exists which renders it necessary to provide for the setting up of Special Courts but what follows in S.1 (3) clearly contradicts the preamble. If the Governor-General judged that such an emergency had arisen he would take immediate action by setting up Special Courts. He says that the Ordinance itself is not in force and shall not come into force until the Provincial Government considers that it should be brought into force by reason of its being satisfied that a certain kind of emergency exists. I would stress here that in cases of emergency the Governor-General has power to promulgate Ordinances for the peace and good government not only of India as a whole but of any part thereof. There is no bar to the Governor-General himself promulgating an ordinance for the peace and good government of any province, if he is of opinion that an emergency existed in that province. But he does not do this. He promulgates an ordinance, but he does not put it into force anywhere; on the contrary he provides in S.1 (3) that it cannot be in force in any province until the Provincial Government is satisfied that an emergency exists and considers that the emergency necessitates the Ordinance being put into force. I draw attention to the words 'only if' in S.72. Why does he do this? The only reasonable answer is because he did not think at the time of promulgating the ordinance that any emergency which required to be met immediately by this ordinance actually existed. If he thought that an emergency existed which, in the words of the Privy Council in 58.A.169 'demanded immediate action' he would surely put the ordinance into force at once or fix a definite date and the earliest possible date when it would come into force; he certainly would not postpone its effectiveness to some indeterminate

date to be fixed by someone else when that someone else considered that a particular emergency which called for the application of the ordinance had arisen. The preamble and S.1 (3) are contradictory, and read together they indicate that the Governor-General has misdirected himself as regards the conditions under which he is given power to promulgate an ordinance. When a preamble contradicts the enacting portion of a statute and that portion is quite clear, the enactment must prevail over the preamble. This principle was laid down by the House of Lords in (1899) A.C.143 at page 157. The Earl of Halsbury L.C. Said:

Two propositions are quite clear — one that a preamble may afford useful light as to what a statute intends to reach, and another that, if an enactment is itself clear and unambiguous no preamble can qualify or cut down the enactment.

Again at page 185 of the same report Lord DAVOEY says:

Undoubtedly—I quote from Chitty, learned Judge's judgment, words with which I cordially agree — it is a settled rule that the preamble cannot be made use of to control the enactments themselves, when they are expressed in clear and unambiguous terms.

Section 1 (3) contains a clear and unambiguous statement. By it Governor-General postpones the operation of the Ordinance until the Provincial Government is satisfied that the emergency requiring the Ordinance has arisen. In other words, he says that the emergency requiring the Ordinance has not yet arisen. The preamble cannot be used to alter or detract from or add to this clear and unambiguous statement in the enactment itself. I am convinced that an emergency necessitating the Ordinance existed: what he thought was that an emergency necessitating this Ordinance may arise at some future date from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack. The words of S.72 are clear: an Ordinance can be promulgated only 'in cases of emergency'. The words are not in case of apprehended emergency or future emergency. The emergency must be in existence or in the words of the Judicial Committee in 58 I.A. 169 the Governor General must judge that an emergency which demands immediate and drastic action is in existence. A little alteration in the Ordinance will bring out more clearly the contradiction between the preamble and the enactment. If, instead of the words 'Provincial Government' in S.1 (3) the words 'Governor General' were substituted, the Ordinance would read thus:

"Whereas an emergency has arisen which makes it necessary to provide for the setting up of Special Criminal Courts:

Now therefore in exercise of the powers conferred by S.72, Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935, the Governor-General is pleased to make and promulgate the following ordinance.

1. (1) This ordinance may be called the special Criminal Courts Ordinance, 1942. (2) It extends to the whole of British India. (3) It shall come into force in any Province only if the Governor-General being satisfied of the existence of an emergency arising from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the official gazette, declares it to be in force when such notification is rescinded:

Provided that any trial or proceeding which was pending at the time of such rescission may be continued and completed as if the provisions of this ordinance were still in force."

If the ordinance was framed thus (and the Governor-General having the right to pass

Ordinances in respect of any Province could very well have framed it thus) what would be the inevitable conclusion? Would it not be that the Governor-General when promulgating the Ordinance was not of opinion that an emergency which required the operation of the Ordinance then existed. The fact that the Ordinance as it stands delegates the function of deciding whether the emergency exists to the Provincial Government makes no difference to the force of the argument that the Governor-General was not of opinion that an emergency existed, it only raises a further difficulty in the way of supporting the Ordinance—a difficulty which I shall presently show is unsurmountable. It has been suggested that the Governor-General considered that an emergency existed which made it necessary not to set up Special Courts immediately but merely to provide for the setting up of Special courts and that it is for this reason that the Ordinance is framed not to set up Special Courts immediately but only to make provision for the setting up of Special Courts by Provincial Government, when the Provincial Government is satisfied that an emergency requires it. In this view, it is argued, that it cannot be said that the Governor General did not think that an emergency necessitating this kind of ordinance existed.

This, in my opinion, is a specious argument. What provides for the setting up of the Special Courts? It is the ordinance and nothing else. What is postponed and left to be brought into force by the Provincial Government when the said Government is satisfied that an emergency exists? It is that very ordinance itself. Section 1 (3) says so in terms. It says that 'it (the ordinance) shall come in force'. Thus the very measure which is providing for the setting up of Special Courts is postponed till an emergency necessitating the measure arises. It follows that the person promulgating such a measure does not think that any emergency requiring the measure exists. In my opinion, the provisions of this ordinance proclaim unmistakably that the Governor-General did not think that an emergency which necessitated the ordinance actually existed. He may have thought that such an emergency may arise at some future time. That, however, is not enough. The Governor-General had no power to promulgate this ordinance unless he was of opinion that the emergency requiring it actually existed: it is therefore *ultra vires* of the Governor-General.

My Lord the Chief Justice and my learned brother Khundkar have said that we cannot say that the emergency did not exist because the emergency is the war which is a 'historical' fact of which we must take judicial notice. They hold the view that in the face of existing historical facts, this Court is bound to hold that there was an emergency and therefore to hold that the Governor-General had judged that there was an emergency. To do otherwise they say, would be to shut our eyes to well-known historical facts. I respectfully dissent from this view. The Privy Council has said in 58 I.A. 169 that once the Governor-General has judged that there is an emergency, this Court cannot say that there was none whatever may be the historical facts. If we cannot look at historical facts to decide that there was no emergency we are equally incompetent to look at historical facts for the purpose of deciding that there is an emergency. We are to be completely blind in this respect and not blind in the Nelsonian manner. There is no scope for putting the telescope once to the blind eye and once to the sound one. What I have taken pains to show is that the Ordinance itself proclaims that the Governor General has not judged that there is an emergency. In the preamble he says that an emergency necessitating the Ordinance has arisen but in S.1 (3) he says that it has not, that it is yet to arise and the canons of statutory interpretation say that S.1 (3) shall prevail over the preamble. If my interpretation of S.1 (3) be correct, then whatever may be the historical facts, we cannot say that an emergency necessitating the Ordinance exists, as that

would amount to contradicting the Governor-General on the question of the existence or non-existence of the emergency and this we are not permitted to do.

My Lord the Chief Justice has referred to the proclamation of the Governor-General under S.102, Government of India Act, 1935. He says that this proclamation showed that there was an emergency and that it could not be said thereafter that no emergency existed. I respectfully disagree with this view. The proclamation of emergency under S.102 was made for the purpose of giving power to the Federal Legislature to make laws for a province with respect to any of the matters enumerated in the Provincial List and for this purpose only. The emergency justifying an Ordinance is quite another matter. A proclamation of emergency under S.102 will not necessarily be sufficient to empower the Governor-General to make an Ordinance. Before he can make an Ordinance the Governor-General must judge that an emergency which necessitates the particular Ordinance exists. This the Governor-General has not judged when promulgating this Ordinance.

A second reason is canvassed by Mr Meyer for holding that the Ordinance is ultra vires. This is what he says: Parliament has entrusted the Governor-General and the Governor-General alone with the duty to judge whether such an emergency exists as would justify him in promulgating an Ordinance. The Governor-General cannot delegate the duty to determine whether an emergency exists to any one. In the present case the Governor-General has not judged whether an emergency which necessitates this Ordinance, exists: but he has left it to the Provincial Government to do this and consequently the Ordinance is ultra vires.

We have therefore to determine first who is the person who in this case is deciding whether such an emergency exists as would necessitate this Ordinance and secondly, whether that person has the right to decide this matter. Let us again look at the Ordinance. In the preamble the Governor-General says that 'an emergency has arisen which makes it necessary to provide for the setting up of Special Criminal Courts'. If this statement remained uncontradicted, perhaps, one could have said little in support of the present argument. But in S.1 (3) the Governor-General says that the Ordinance is not to come into force until the Provincial Government is satisfied that an emergency has arisen from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack and being so satisfied declares it to be in force by a notification in the Gazette. It is thus clear that the Ordinance has no force at all until the Provincial Government decides to bring it into force upon being satisfied that an emergency necessitating the Ordinance exists. I would point out here that S.1 (3) does not say that the Provincial Government shall bring the Ordinance into force whenever there is a hostile attack on India or on a country neighbouring on India or whenever there is imminence of such an attack. Some at least of these events had actually happened when the Ordinance was promulgated. Burma had been invaded. All or any of the above mentioned events may happen and yet the Provincial Government may not according to the terms of the Ordinance be justified in not bringing it into force.

One must be careful to distinguish between an emergency and the events which may lead to an emergency. They are not equivalent matters. An invasion may lead to food shortage; this would be an emergency necessitating one kind of legislation or it may lead to sabotage and that would require another type of legislation. In the present Ordinance very wide powers are given to the Provincial Government, in fact overriding powers are given. The Provincial Government may let the Ordinance remain inert as it was when promulgated by the Governor-General or it may give it life. The Provincial Government is left to decide whether an emergency of such a description has arisen as would justify the ordinance being put into force.

A recent amendment of the Ordinance makes the point I am labouring clear. The Special Courts (Second Amendment) Ordinance of 1942 (ordinance 42 of 1942 brought into force in August 1942) adds another event from which an emergency may arise. It is 'any disorder in the province'. It is obvious that the Provincial Government is not bound to bring the Ordinance into force as soon as any disorder occurs in the province. The Provincial Government is asked to judge whether such disorder has created an emergency of such description as would justify the Ordinance being put into force. If the words of the preamble and S.1 (3) are read together and analysed this is what we find the Governor-General saying in effect: 'I am of opinion that if an emergency arises from invasion, imminence of invasion or internal disorder Special Criminal Courts should be set up, the power of the High Court should be curtailed and certain other things should be done. I leave it however to the Provincial Government to decide whether such an emergency has arisen by reason of these events as would require the creation of Special Courts, the curtailment of the power of the High Court and the doing of the other things mentioned in the Ordinance.'

I can quite realise an emergency arising out of imminence of invasion which would justify an Ordinance curtailing the right of the subject to have recourse to the High Court. I can also envisage an emergency arising from the imminence of invasion which could not possibly justify an Ordinance curtailing the powers of the High Court to rectify injustice. When the High Court is functioning normally, sitting in its usual place and dealing with intricate civil matters as if nothing unusual had happened I find it difficult to appreciate how a curtailment of its powers to do justice in criminal matters can help to solve any emergency arising out of a threatened invasion. In my opinion in these conditions such curtailment would further intensify the emergency by creating panic among the people. The position would be different if owing to bombing or some similar cause the High Court had to disperse to places which were not easily accessible to the people. However, it is not for this Court to decide whether the Ordinance is justified or not, in this matter also the Privy Council has said that the Governor-General is the sole judge. I have digressed somewhat, but I have done so to emphasise the point that the Governor-General is leaving it entirely to the Provincial Government to decide not only if an emergency exists but also to decide whether the emergency is of such a description as would justify the Ordinance.

The Provincial Government has decided that even in Calcutta where there is no riot or civil commotion, where all Courts including the High Court are sitting and carrying out their normal duties in a normal fashion, a person wrongly convicted and sentenced by a Special Criminal Court situated at a place a few minutes walk from this Court will not have the right to demand any redress from this Court. I have referred to the conditions under which the Ordinance has been brought into force in Bengal not for the purpose of ventilating the opinion, which I hold, that there is not necessity for this Ordinance at any rate in this part of Bengal — as my opinion regarding the propriety of enforcing the Ordinance is of no relevance in a discussion regarding its validity; but I refer to these matters to illustrate the fact that while it is quite possible for the Governor-General and the Provincial Government to hold different views on the question whether such an emergency exists in Bengal as would justify this Ordinance, the Governor-General abdicates his duty to judge this matter and gives the Provincial Government the complete and exclusive right to decide it. Having regard to all these circumstances is there any doubt as to the person who in this case is deciding whether such an emergency exists as would justify this ordinance? In my opinion there can be none. It is the Provincial Government which is being made the sole judge of this emergency.

The next point to decide is whether the Governor-General can empower the Provincial Government to decide whether an emergency which necessitates the Governor-General's Ordinance exists. We must again go back to S.72 of Sch.9, Government of India Act, 1935, and to the decision of the Privy Council in 58 I.A.169 where this section was interpreted. Section 72 gives power to the Governor-General to legislate by Ordinance if an emergency requiring the Ordinance exists. Who is to decide whether an emergency exists? The Judicial Committee in emphatic terms has said that it is more than obvious that the 'Governor-General and he alone' is to judge whether a state of emergency exists. After this, there is no room for suggesting that any one else has the power to decide this matter. I wish to make it clear that I am not now dealing with the question of the delegation of legislative powers, but with the question whether a particular function assigned to the Governor-General by Parliament can be assigned by him to any one else. Parliament has entrusted to the Governor-General the judicial function of deciding whether such an emergency exists as would justify him in promulgating an Ordinance. I have described the function as a judicial one deliberately. The decision whether or not an emergency necessitating the exercise of his ordinance making powers exists is not a mechanical act which involves no matter of discretion and which can be performed by one person as well as by any other. It is a function which involves the exercise of one's deliberative faculties and faculties of judgment and discretion. Where the performance of such a function is entrusted by Parliament to any one he must discharge it himself, he cannot unless expressly permitted to do so by Parliament, delegate this function to any one else. The doctrine '*delegata potestas non potest delegari*' (a delegated power cannot be delegated) is one, which is usually applied in cases arising out of contract, but the principle of that doctrine is of universal application and would apply in this case. If authority be needed for this proposition I would refer to the case of 19 Howell State Trials 1030 at p. 1063 where it was observed by Lord Camden that a Magistrate can have no assistant nor deputy to execute any part of his employment 'because the right is personal to himself and a trust that he can no more delegate to another than a justice of the peace can transfer his commission to his clerk.'

In giving the Governor-General ordinance making powers, Parliament imposed the duty upon the Governor-General to judge whether or not an emergency which necessitated an Ordinance existed and that trust he can not delegate to another. In the present case the Governor-General has delegated this trust or function to the Provincial Government and this makes the Ordinance *ultra vires*. To meet this argument, Mr Ahmed on behalf of the Crown, referred us to the well-known decision of the Privy Council in 51.A.178 and also to certain recent decisions regarding this Ordinance of different High courts where 51.A.178 was relied upon to repel the contention that this Ordinance is *ultra vires*. The decisions are A.I.R. (30) 1943 All. 26 I.L.R. (1943) Nag.73 at pp. 89, 90, A.I.R. (30) 1943 Pat.24 at pp. 26, 27 and an unreported decision of the High Court of Bombay [A.I.R. 1943 Bom.169 (F.B.).]

I shall first deal with 51 A. 178 In 1869 the Governor-General in Council, which was then the Indian Legislature, passed an Act purporting, inter alia, to remove the Garo Hills from the jurisdiction of the Courts of Civil and Criminal Jurisdiction and to vest the administration of civil and criminal justice within that territory in such officer as the Lieutenant Governor of Bengal might from time to time appoint. The Act was to come into operation on such date as the Lieutenant Governor should by notification in the Calcutta Gazette direct. By S.9 of the Act the Lieutenant Governor was empowered from time to time by notification in the Calcutta Gazette to extend '*mutatis mutandis*' all or any of the provisions of the Act to the Jaintia Hills, Naga Hills etc. The question arose whether this Act was *intra vires* of the Indian

Legislature. The majority of a Full Bench of this Court held that S.9 of this Act was in excess of the legislative powers of the Indian Legislature because that section was not legislation but a delegation of legislative power, inasmuch as, it was left to the Lieutenant Governor to extend the Act or such portion of the Act as he thought fit to different areas. The Judicial Committee held that the decision of the majority of the Full Bench was wrong and allowed the appeal. This is what their Lordships said:

But their Lordships are of opinion that the doctrine of the majority of the Court is erroneous, and that it rests upon a mistaken view of the powers of the Indian Legislature, and indeed of the nature and principles of legislation. The Indian Legislature has powers expressly limited by the Act of the Imperial Parliament which created it, and it can, of course, do nothing beyond the limits which circumscribe these powers. But, when acting within those limits, it is not in any sense an agent or delegate of the Imperial Parliament, but has, and was intended to have plenary powers of legislation, as large and of the same nature, as those of Parliament itself. The established courts of justice when a question arises whether the prescribed limits have been exceeded, must of necessity determine that question, and the only way in which they can properly do so, is by looking to the terms of the instrument by which, affirmatively, the legislative powers were created, and by which, negatively, they are restricted. If what has been done is legislation within the general scope of the affirmative words which give the power, and if it violates no express condition or restriction by which that power is limited (in which category would, of course, be included any Act of the Imperial Parliament at variance with it) it is not for any Court of justice to inquire further, or to enlarge constructively those conditions and restrictions.

Again (at page 195) this is what their Lordships say:

The proper Legislature has exercised its judgment as to place, person, laws, powers; and the result of that judgment has been to legislate conditionally as to all these things. The conditions having been fulfilled, the legislation is now absolute. Where plenary powers of legislation exist as to particular subjects, whether in an Imperial or in a Provincial Legislature, they may (in their Lordships' judgment) be well exercised, either absolutely or conditionally. Legislation, conditional on the use of particular powers, or on the exercise of a limited discretion, entrusted by the Legislature to persons in whom it place confidence, is no uncommon thing, and in many circumstances, it may be highly convenient.

These observations of the Judicial Committee are relied upon by the crown as a complete answer to the present argument that the ordinance is *ultra vires* because the Governor-General by S 1 (3) of the Ordinance has delegated to the Provincial Government a function entrusted by Parliament to the Governor-General alone viz., the function of judging whether or not an emergency necessitating the ordinance exists. In my opinion an analysis of the decision in (1878) 3 A.C. 889 will show that it does not answer this argument urged on behalf of the petitioners and that it has really very little to do with the point under discussion. The Judicial Committee were dealing with an Act of the Indian Legislature, a body clothed with general legislative powers by the Indian Councils Act passed by the British Parliament. I would emphasise that the Judicial Committee do not say that an authority clothed with general legislative powers can delegate such general legislative powers to another authority. On the contrary they said that this could not be done. Their view was that there had not been any such delegation in this case but only conditional legislation. At p. 194 this is what they observed:

Their Lordships agree that the Governor-General in council (i.e. then Indian Legislature) could not by any power of enactment create in India, and arm with general legislative authority a new legislative power not created or authorized by the Councils' Act. Nothing of that kind has, in their Lordships' opinion, been done or attempted in the present case.

As I have said before I am not at present dealing with the question of delegation of legislative powers at all, but with the question whether the judicial function entrusted to the Governor-General by Parliament of deciding whether a particular type of emergency exists which required legislation by ordinance could be delegated to someone else (1878) 3 A.C. 889 has not dealt with this question at all; it was not a question which arose for consideration in the case and nothing which was said in (1878) 3 A.C. 889 can be taken to indicate that such functions can be delegated. In fact the general principle underlying the maxim *delegata potestas non potest delegari* was expressly recognised by their Lordships when they said that the Indian Legislature which was clothed with general legislative authority by Parliament could not clothe any other body with such general legislative authority. What the Privy Council decided was only this. When an authority is given plenary or unconditional powers of legislation with certain limits prescribed by Parliament, it can within those limits do anything which Parliament could have done. Having unconditional powers it could pass conditional legislation. The Privy Council have not said that when an authority is given only conditional powers of legislation it can legislate beyond those conditions; nor have they said that where an authority has to decide whether a certain condition precedent giving it power to legislate exists, it can leave the decision of that matter to some one else. Parliament has enacted that the Governor-General can legislate by ordinance only on condition that the Governor-General is of opinion that an emergency requiring the Ordinance exists. Nothing said in (1878) 3 A.C. 889 can be interpreted to permit the Governor-General leaving anyone else to decide whether or not an emergency exists.

Where an authority is given plenary power to do a certain thing by legislation, it may be that that authority can validly make a law whereby it empowers someone else to do that thing. I do not say that this can be done, but admitting for the sake of argument that (1878) 3 A.C. 889 has decided that this can be done. I would still say that the contention of Mr Meyer that the Governor-General cannot delegate his function of judging whether an emergency exists to anyone, remains unassailable. If the Governor-General had been given power by Parliament to declare by legislation that an emergency existed it may be that he could by Ordinance empower the Provincial Government to make such a declaration. But Parliament has not given this legislative power to the Governor-General. The Governor-General has no power to legislate by Ordinance at all until he first judges that there is an emergency requiring the Ordinance. There is therefore no power in the Governor-General to legislate by Ordinance that Provincial Government shall decide whether an emergency necessitating the Ordinance exists. I shall now deal briefly with the decisions of the other High Courts regarding the points raised. In A.I.R. (30) 1943 ALL. 26 the argument was that inasmuch as the Ordinance was not put in operation on the date of its promulgation it must be presumed that no emergency existed and therefore the Ordinance was bad. This argument was met by Iqbal Ahmad C.J. thus:

'The short answer to this contention, to my mind, is that the Governor General is the sole judge as to the existence or absence of an emergency and accordingly, the validity of an Ordinance which is otherwise intra vires the Governor-General cannot be called in question on the ground that no emergency as a matter of fact existed.

He then referred to 58 I.A. 169. It seems that the point of view placed before us by Mr Meyer, viz., that the Ordinance shows that the Governor-General did not judge there was an emergency, was not placed before the Allahabad High Court. What the Chief Justice has said there is no answer to the point raised in this court. It was also argued in that case that the Governor-General had delegated the determination of the question of emergency to the

Provincial Government and that such delegation was not permissible. The Chief Justice met the point thus:

If the Ordinance was validly promulgated on 2nd January its validity could not be questioned on the ground that its enforcement was deferred and was made dependent on any specified set of facts. The power to promulgate an Ordinance necessarily carries with it the power to specify the conditions necessary for its enforcement.

He referred in support of his view to the case in (1882) 7 A.C. 829 which followed (1878) 3 A.C. 889. With great respect to the learned Chief Justice I am unable to agree with his view. He starts by saying 'If the Ordinance was validly promulgated on 2nd January'. Certainly, if it was validly promulgated its validity could not be challenged. The question is whether it was validly promulgated. Next, the question raised was not one of merely deferring the enforcement of a valid law: the question related to propriety of the delegation of a judicial function to decide on a certain matter. This question was not considered by the learned Chief Justice. In A.I.R. (30) 1943 Pat. 24 it was argued that the Governor-General could leave the question of the existence of an emergency to anyone else. Next it was argued that the fact that the question regarding the existence of the emergency was left to the Provincial Government showed that there was no emergency. Lastly, it was said that the fact that it was left to the Provincial Government to decide when to bring the Ordinance into force also showed that there was really no emergency. All these arguments were met by saying that in 58 I.A. 169 the Privy Council said that the Governor-General was the sole judge of whether an emergency existed. Fazl Ali J. said 'the mere recital in the preamble that there was an emergency is enough'. He goes on to say that once there is such a recital then the Ordinance must be held to be a good Ordinance and 'all the provisions made therein including the provisions of S 1 (3) by which the Provincial Government are to decide where the Special Courts are to be constituted must also be held to be good'.

The question of the validity of the delegation of the function to decide whether an emergency existed or not was not specifically dealt with at all. I must respectfully disagree with the view of Fazl Ali J. that the statement in the preamble prevents us from deciding whether or not the Governor-General had judged that an emergency existed. Nor can I agree with him that this statement in the preamble protects every other provision in the Ordinance from being declared illegal. Fazl Ali J. referred to (1878) 3 A.C. 889 when dealing with the postponement of the enforcement of the Ordinance. As I have said before (1878) 3 A.C. 889 has not dealt with the question of the propriety of the delegation of the function of the Governor-General to decide whether an emergency exists so it is not necessary for me to deal with that part of the Fazl Ali J.'s judgment.

In I.L.R. 1943 Nag. 73 it was argued that the Governor-General had promulgated the Ordinance before an emergency had arisen and had abdicated his legislative authority in favour of the Provincial Government to promulgate the Ordinance when the actual emergency arose. Niyogi J., relied on 58 I.A. 169 and said that the Governor-General was the sole judge to decide whether an emergency existed and added 'It must be assumed that there was an emergency when he declared that there was'. He went on to say that the Ordinance was promulgated to meet an emergency which was likely to become more acute and all that S.1 (3) did was to indicate at what acute stage the Ordinance was to be put in force. He then relied on (1878) 3 A.C. 889 and held that the Ordinance was *intra vires* of the Governor-General. All I need say is that the precise form of the arguments addressed to us was different

from the arguments addressed to Niyogi J. I would respectfully add that I am not able to accept his interpretation of S.1 (3) for the reasons which I have already given when dealing with the arguments addressed to us. There remains an unreported case decided by the Bombay High Court which was placed before us by the learned Deputy Legal Remembrancer, Viz. Cr. Application No. 431 of 1942 [A.I.R. 1943 Bom. 169 F.B.]. Dealing with the argument that the Ordinance showed that there was no existing emergency because its enforcement was postponed. Beaumont C.J. said this

'The Governor-General has said that an emergency exists, and to say that there cannot be an emergency, unless it is necessary instantly to bring the terms of the Ordinance into operation, is to suggest that there can be no emergency with which the Governor General can deal before it arises. It suggests that the Governor-General can never exercise any foresight in the protection of the State.

With great respect to Beaumont C.J. I must say that I entirely disagree with him in his view that the Governor-General can promulgate an Ordinance before an emergency arises. He can exercise his foresight and contemplate Ordinances but he can promulgate them only when an emergency exists. Section 72 as interpreted by the Judicial Committee in 58 I.A. 169 makes this quite clear. I agree that the Governor-General can use his foresight in the protection of the State. He may promulgate Ordinances to protect the State from an impending disaster but an impending disaster means an existing emergency. If I may say so with great respect, Beaumont C.J. was not quite right in his appreciation of the term 'emergency' as used in S.72 of sch.9. It is something in existence which calls for immediate action. When dealing with question of the delegation of the Governor-General's function to judge whether an emergency existed, the learned chief Justice said that the use of the word 'emergency' in sub.S.(3) of S.1 was 'rather unfortunate' because it suggested two emergencies. He added that there was only one emergency viz., that which justified the promulgation of the ordinance and it was that emergency which justified the Governor-General in leaving it to the Provincial Government to bring the ordinance into operation as part of the machinery for carrying out the ordinance.'

I am aware of the principle that emergency legislation cannot be so carefully and skilfully drafted as normal peace-time legislation and that courts in construing emergency legislation should bear this in mind and avoid being too meticulous or fastidious but I would respectfully say that the construction put on S.1 (3) by the learned Chief Justice savours more of legislation than of construction. Further it should be remembered that the ordinance is taking away valuable rights from the subject and also curtailing the jurisdiction and powers of this Court; when an Act or ordinance does this the duty of the Court is to be vigilant and to satisfy itself that all the conditions necessary for the validity of such an ordinance or Act have been complied with. Bearing all this in mind I am unable to agree with Beaumont C.J. that all that S.1 (3) does is to leave the Provincial Government to put the machinery of the Ordinance into action. It does something more; it leaves it to the Provincial Government to decide whether such an emergency exists as would justify the Ordinance being put into operation. If I may say so, with the greatest respect, in most of the cases one point is lost sight of, viz., that the emergency and the measure to meet it are not unconnected matters and that they are interdependent. The measure is something which is taken to meet the particular emergency. These two things cannot be viewed apart from each other. They are inextricably bound together. The person who decides the emergency must also devise the measure to meet it. One person must be responsible for both. It is this principle that has also been ignored in the promulgation of this Ordinance.

The third and the last point urged by Mr Meyer is this: The Governor-General has not only delegated the function of deciding whether the emergency exists but he has also delegated his legislative functions to the Provincial Government. The Governor-General does not decide what jurisdiction the different Courts are to have; he has left that to the Provincial Government to decide either by itself or by some officer empowered in this behalf by the Provincial Government. By this Ordinance it is the Provincial Government or the officer of the Provincial Government who is given power to decide how much of the criminal jurisdiction of the High Court is to be taken away. My Lord the Chief Justice and my learned brother Khundkar have dealt with this point very fully and I cannot usefully add anything to what they have said.

I would rest my decision that the ordinance is ultra vires on the other grounds discussed by me. As the ordinance is ultra vires we must hold that the Special Court which tried the petitioners was not properly constituted and had no jurisdiction to try them. This rule must therefore be made absolute. The convictions and sentences must be set aside. The order that I would pass would be that the petitioners be released and that Provincial Government should re-arrest them and proceed against them according to law in the ordinary Courts.

By the court — As the majority of the Court is of the opinion that the applicants have been convicted by a Court which had no jurisdiction to deal with them and as the other member of the Court is of the opinion that the tribunal under no circumstances could have jurisdiction over them, we make the order that the conviction be set aside and that the applicants be released, but that they be re-arrested and dealt with in the ordinary Court according to the ordinary process of law. It will be for those in charge of this case to see that these persons are rearrested and brought before the Magistrate and dealt with; and we direct the attention of the Magistrate to the provisions relating to bail in S.130 A of the Defence of India Rules, but not in the sense that we suggest that they should have bail. Certificate is granted under S.205, Government of India Act.

K.S.

Conviction set aside. W

27. Keshav Talpade (Appellant) v. Emperor [Gwyer C.J., S. Varadachariar and Zafrullah Khan J.J. (22 April 1943)]

AIR, Vol. 30, 1943, Federal Court Calcutta, pp. 1-9

G.N. Joshi (B.G. Thakar, with him) instructed by R.G. Naik, Agent — for Appellant.

N.P. Engineer, Advocate-General, Bombay (M.M. Desai with him) instructed by B. Banerjee, Agent for Respondent.

Sir Brojendra Mitter,* Advocate-General of India (H.R. Kazimi, with him) instructed by K.Y. Bhandarkar, Agent for the Governor General in Council.

Gwyer C.J. — In this case the appellant appeals against the refusal of a Division Bench

of the High Court of Bombay to grant an order under S.491, Criminal P.C., in the nature of writ of habeas corpus in order to secure the release of the appellant from detention under an order purporting to be made under R.26 of the Defence of India Rules. The appellant was arrested on 24th August last under R.129, and an order for his detention under R. 26 was made by the Provincial Government on 27th August. The ground on which the appellant asked for an order under S.491 was that the Defence of India Act, 1939, and as a necessary corollary the rules made thereunder are ultra vires, since the Act purports to relate to the defence of India, and no power is conferred on the Central Legislature or upon any other Legislature in India to legislate on that subject. This is a startling contention and, if it is sound, would have even more startling consequences. It is therefore necessary to examine closely the facts of the case and the relevant statutory provisions which have been brought to our notice. The appellant states that he was arrested by a police officer on 24th August 1942 and detained in custody, that on 4th September, he was removed to the Thana Jail; and that he learned later that an order had been made by the Bombay Government dated 27th August, which is in the following terms.

‘Whereas the Government of Bombay has received a report from the Commissioner of Police, Bombay, that the person known as Keshav Talpade had been arrested and committed to jail custody under sub-rules (1) and (2) respectively, of R. 129 of the Defence of India Rules.

And whereas the Government of Bombay is satisfied that with a view to preventing the said Keshav Talpade from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order and the efficient prosecution of the war, it is necessary to make the following order.’

Now, therefore, in exercise of the powers conferred by sub-R. (4) of R.129 read with R. 26 of said rules, the Government of Bombay is pleased to direct: (a) that the said Keshav Talpade be detained until further orders, (b) that he shall be detained in the Thana District Prison until any other place for his detention is determined by a competent authority under sub-r. (5) of the said R. 26; and (c) that he shall for the purposes of the Security prisoners Detention Conditions Order, 1941, be classified as a Class II security prisoner.

The appellant further states that he is now detained in the Yeravada jail, Poona. He denies that he has acted in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order and the efficient prosecution of war; on the contrary he says that he believes in giving unqualified aid to the efficient prosecution of war. It is not disputed that he is in fact detained under the order to which we have referred. The two rules, 26 and 129, are in the following terms.

‘26 (1) The Central Government or the Provincial Government, if it is satisfied with respect to any particular person that with view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty’s relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war it is necessary so to do, may make an order: (a) directing such person to remove himself from British India in such manner, by such time and by such route as may be specified in the order, and prohibiting his return to British India, (b) directing that he be detained; (c) directing that, except in so far as he may be permitted by the provisions of the order, by such authority or person as may be specified therein he shall not be in such area or place in British India as may be specified in the order; (d) requiring him to reside or remain in such place or within such area in British India as may be specified

in the order and if he is not already there to proceed to that place or area within such time as may be specified in the order; (e) requiring him to notify his movements or to report himself or both in such manner at such times and to such authority or person as may be specified in the order; (f) imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinions; (g) prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order; (h) otherwise regulating his conduct in any such particular as may be specified in the order.'

Provided that no order shall be made under cl. (a) of this sub rule in respect of any British Indian subject of His Majesty.

Provided further that no order shall be made by the Provincial Government under cl. (c) of this sub-rule directing that any person ordinarily resident in the province shall not be in the province.

(3) An order made under sub-rule (1) may require the person in respect of whom it is made to enter into a bond, with or without sureties, for the due performance of, or as an alternative to the enforcement of, such restrictions or conditions made in the order as may be specified in the order:

(1) If any person is in any area or place in contravention of an order made under the provision of this rule, or fails to leave any area or place in accordance with the requirements of such an order, then, without prejudice to the provisions of sub r. (5), he may be removed from such area or place by any police officer or by any person acting on behalf of Government.

(5) So long as there is in force in respect of any person such order as aforesaid directing that he be detained, he shall be liable to be detained in such place, and under such conditions as to maintenance, discipline and the punishment of offences and breaches of discipline, as the Central Government or the Provincial Government, at the case may be, may from time to time determine.

(5A) Where the power to determine the place of detention is exercisable by the Provincial Government, the power of the Provincial Government shall include power to determine a place of detention outside the province:

Provided that: (a) no such place shall be determined save with the previous consent of the Provincial Government of the Province in which the place is situated, or where the place is situated in a Chief Commissioner's Province, of the Central Government; (b) the power to determine the conditions of detention shall be exercised by the provincial Government of the province in which the place is situated, or, where the place is situated in a Chief Commissioner's Province, by the Central Government.

(5B) If the Central Government or the Provincial Government, as the case may be, has reason to believe that a person in respect of whom that Government has made an order under cl. (b) of sub r. (1) directing that he be detained has absconded or is concealing himself so that such order cannot be executed, the Government may; (a) make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the First Class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of Ss. 87, 88 and 89, Criminal P.C. 1908, shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate; (b) by notified order direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such

direction he shall, unless he proves that it was not possible for him to comply therewith and that he had within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to seven years or with fine or with both.

(5C) The Central Government or the Provincial Government may by general or special order made with the consent of the Crown Representative, provide for the removal of any person detained by it under sub-r. (1) to, and for the detention of such person in, any area administered by the Crown Representative.

(6) If any person contravenes any order made under this rule, he shall be punishable with imprisonment for a term which may extend to five years or with fine or with both, and if such person has entered into a bond in pursuance of the provisions of sub-r. (3) his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

129.(1) Any police officer or any other officer of Government empowered in this behalf by general or special order of the Central Government, or of the Provincial Government may arrest without warrant any person whom he reasonably suspects of having acted, acting, or of being about to act — (a) with intent to assist any State at war with His Majesty, or in a manner prejudicial to the public safety or to the efficient prosecution of war; (b) in any area in which the provincial Government has, by notification, declared that this clause shall become operative in a manner calculated to promote, or to assist the promotion of, rebellion against the authority of Government; (c) in any prohibited place, protected place or protected area, or any other place or area as respects which (*sic*) an order has been made under R. 9 in a manner prejudicial (1) to the safety of any such place or area or of any industry, machinery or building in any such place or area (ii) to the output or effective control of any such industry or machinery.

(2) Any officer who makes an arrest in pursuance of sub-r. (1) shall forthwith report the fact of such arrest to the Provincial Government, and, pending the receipt of the orders of the Provincial Government, may subject to the provisions of sub-r. (3), by order in writing, commit any person so arrested to such custody as the provincial Government may by general or special order specify;

Provided (1) that no person shall be detained in custody under this sub-rule for a period exceeding fifteen days without the order of the Provincial Government; and (ii) that no person shall be detained in custody under this sub-rule for a period exceeding two months.

(3) If any person arrested under cl. (c) of sub-rule (1) is prepared to furnish security, the officer who has arrested him may, instead of committing him to custody, release him on his executing a bond with or without sureties that he will not, pending the receipt of the orders of the Provincial Government, enter, reside or remain in the areas in respect of which he became liable to arrest.

(4) On receipt of any report made under the provisions of sub-rule (2), the Provincial Government may, in addition to making such order, subject to proviso 2 to sub-rule (2), as may appear to be necessary for the temporary custody of any person arrested under this rule, make, in exercise of any power conferred upon it by any law for the time being in force, such final order as to his detention, release, residence or any other matter concerning him as may appear to the said Government in the circumstances of the case to be reasonable or necessary.

(5) Subject to the condition that nothing in this sub-rule shall be deemed to extend the

limits of detention prescribed in provisions 1 and 2 to sub-rule (2), the Provincial Government may direct that any person arrested under cl. (a) or cl. (b) of sub-rule (1) shall be removed to any other province of which the provincial Government (hereinafter described as the second Government) has given its consent in this behalf, and thereupon such person shall be removed and the second Government shall take in respect of such person such action as may be lawful in like manner as if such person had been arrested within its province.

(6) When security has been taken in pursuance of the provisions of sub-rule (3), the bond shall be deemed to be a bond taken under the Code of Criminal Procedure, 1898, by the Chief Presidency Magistrate or District Magistrate having jurisdiction in the area in respect of which the said security has been taken and the provisions of S.514 of the said Code shall apply accordingly.'

Both rules were made by the Central Government under powers conferred by the Defence of India Act, 1938. Section 2 (1) of that Act provides that the Central Government may, by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community.'

Sub-section (2) is as follows:

'Without prejudice to the generality of the powers conferred by sub-section (1), the rules may provide for, or may empower any authority to make orders providing for, all or any of the following matters', and then follow 35 paragraphs each of which sets out a matter or matters for which rules under the Act may be made. Apart from the general words in sub-section (1), para (10) of sub-section (2) appears to be the only provision in the Act dealing with the apprehension and detention of suspects. Paragraph (10) is in the following terms:

the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to act, in a manner prejudicial to the public safety or interest or to the defence of British India the prohibition of such person entering or residing or remaining in any area and the compelling of such person to reside and remain in any area, or to do or abstain from doing anything.

Counsel for the appellant contended that the Central Legislature had no power to enact the Defence of India Act, 1939, at all, because the 'defence of India' is not to be found among any of the entries in Lists I, II or III in Sch. 7, Constitution Act. This is no doubt true, and it is plain from various provisions of the Act that the executive authority of the Governor-General with respect to defence extends beyond matters with respect to which the Central Legislature has power to make laws: see example Ss. 7, 8, 11 and 12 (or during the transitional period, before part II comes into force, Ss. 312 and 313). We need not enlarge on the general scheme of the Act, which is now well known. It is sufficient to say that list I sets out a number of matter in respect of which the Central Legislature has an exclusive right of legislation, list II a list of matters in respect of which the provincial legislatures have a similar exclusive right, and list III a list of matters in respect of which the Central and provincial Legislatures have a concurrent power of legislation. There are one or two entries which are indirectly connected with defence such as entries Nos 1 and 2 in list I and entry No. 34 in list III; but many other entries in one or other of the three lists would clearly enable legislation of different kinds to be enacted, would in fact be effective for the purposes of defence. The S.102 of the Act provides that, if the Governor-General has declared by proclamation that a grave emergency

exists whereby the security of India is threatened, whether by war of internal disturbance, the Central Legislature is to have power to make laws for a province or any part thereof with respect to any of the matters in the provincial Legislative list. Such a proclamation has been issued, and accordingly the Central Legislature has at the present time power to make laws with respect to any matter in any of the three lists.

It is plain, we think, that entries in the Legislative Lists can be found which would justify legislation on most matters covered by the general words in S.2 (1), Defence of India Act, as well as by the more precise provisions set out in sub-section (2) with its thirty five paragraphs. The draftsman of S.2 (1) appears to have adopted the language of the Emergency powers (Defence) Act, 1939, which has been passed by Parliament, not altogether happily, seeing that with the possible exception of 'the maintenance of public order', none of the purposes which he has set out are to be found under the same description among the matters comprised in the legislative lists. Counsel for the appellant however contended that legislation purporting to be with respect to 'the defence of India' as such was ultra vires the Central Legislature altogether. So far as we understood him, he was prepared to admit that many of the provisions in the Act of 1939 could be justified by one or more entries in the Legislative Lists, if they stood by themselves, but that if they purported to be provision 'with respect to the defence of India' then they were bad. He would not admit that some of the provisions in the Act might be good, even if others were bad for the reason which we have just given, for he argued that the Act represented a single legislative scheme every part of which was so closely interwoven with every other part that it was not possible to sever the valid from the invalid. This argument appears to us to be without any substance. If it can be shown that there are provisions in the Act of 1939 which are not covered by any of the entries in the Legislative Lists, then no doubt they will be open to challenge. It is however unnecessary in the present case that we should analyse for that purpose the Act and the Rules made under it since entry No. 1 of list 1 gives the Central Legislature in any event power to legislate with respect to preventive detention in British India for reasons of State connected with defence and certain other specified matters, and we see no reason why it is not permissible to treat any provisions with respect to this as severable from the rest of the Act and Rules even if all the latter are bad. We agree on this point with the High Court of Bombay. The High Court of Allahabad had substantially the same argument addressed to them and arrived at a similar conclusion in I.L.R. (1941) All. 617; see especially the judgment of Braund J.

The Canadian and Australian cases cited on behalf of the appellant do not assist him. In those Dominions the subject of 'defence' is a matter within the exclusive competence of the Dominion Parliament and the Commonwealth Parliament respectively. In the Canadian case, 1923 A.C. 695, the question was whether Dominion Legislation could be justified as a defence measure even though it trespassed on the provincial sphere, and the Privy Council returned an affirmative answer. A similar conclusion was reached in Australia (21 Commonwealth L.R. 433), and therefore it is true to say that the Courts have decided that the Central Legislature has by implication both in Canada and Australia all the powers of legislating with respect to 'defence' which S.102, Constitution Act, has expressly conferred on the Central Legislature in India.

We therefore reject the main argument addressed to us on behalf of the appellant, and if there were nothing more in the appeal, we should dismiss it without further discussion. There is however another aspect of the case, which was not argued until the Court itself drew the attention of counsel to it, for it seemed to us that it was open to question whether

R. 26 itself in its present form was within the rule-making powers conferred by the Defence of India Act. If it is not within those powers, then it must be held void and inoperative, either in whole or in part: and orders made under it will be similarly open to challenge. The power conferred on the Central Government by S.2(2) (X) of the Act we leave aside for the moment the more general powers in sub-section (1), is to make rules providing for the apprehension and detention in custody of any person reasonably suspected of being of hostile origin or of having acted, acting or being about to a act, in a manner prejudicial to the public safety or interest or to the defence of British India. Under R. 26 it is enough that the Central or provincial Government

is satisfied with respect to any particular person that his detention is necessary with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful condition in tribal areas or the efficient prosecution of the war.

The reference to His Majesty's relations with foreign powers or Indian States and the maintenance of peaceful conditions in tribal areas were added to the original rule by Notification dated 3rd August 1940. It will be seen that there is nothing about hostile origins. 'Reasonably suspected' implies the existence of suspicion for which there is reasonable justification: but by what test is the reasonableness of the justification to be determined? Nothing is said in R. 26 about suspicions, reasonable or otherwise, that the person concerned has acted, is acting, or is about to act in a prejudicial manner, those who framed it thought it sufficient to provide that the Government should be satisfied that the detention is necessary with a view to prevent the person concerned from acting in a 'prejudicial manner. We are compelled therefore to ask ourselves two questions: (1) whether 'reasonably suspected' in the rule making power means suspected on grounds which appear reasonable to the detaining authority or whether it means suspected on grounds which are in fact reasonable: and (2) whether a statutory power to make a rule for the detention of person reasonably suspected of having acted, of acting or of being about to act in a certain specified way justifies the making of rule which merely empowers Government to detain a person if it is satisfied that it is necessary to do so with a view to preventing him from acting in that way or in certain other ways also.

We approach the consideration of these question with the anxiety which a Court of Justice must always feel where the liberty of the subject is concerned; but we have at the same time to remember that the country is at war and that in war as it is known today every Government in the world has found it necessary to arm itself with powers untaught of and often unknown in time of peace. And though it is well to remember that, as was said in one of the judgments delivered in a case before this Court some years ago, Courts of law ought to abstain from harsh and ungenerous criticism of acts done in good faith by those who bear the burden and responsibility of Government, especially in times of danger and crisis, we are not on that account relieved from the duty of seeing that the executive Government does not seek to exercise powers in excess of those which the Legislature has thought fit to confer upon it, however drastic and far — reaching those powers may be and however great the emergency which they are designed to meet. Nevertheless, we must constantly bear in mind the purpose of the powers given since to use the words of Lord Macmillan in 1942 A.C. 206 at p. 252.

It is right so to interpret emergency legislation as to promote rather than to defeat its efficacy for the defence of the realm. That is accordance with a general rule applicable to the interpretation of all statutes or statutory regulations in peace time as well as in war time.

[*Omitted*: Further elaboration of the points raised in *Liversidge v. Sir John Anderson* (1942 A.C. 206), from which the remarks of Lord Macmillan are quoted — Ed.]

It may be that the draftsman of the Indian Act and Rules made thereunder intended that S.2 (2) (X) and R. 26 should have an effect similar to that which the House of Lords have now attributed to the Emergency powers (Defence) Act, 1939, and Regulation I.S.B. It may be so, but he has used different language. There is in the Indian Act no trace of an intention that any particular person or authority should exercise the power of detention. On the contrary, the selection of those who are to exercise this most important and exceptional power is left to be decided by the rules themselves (i.e., by the executive which makes the rules). The vast areas of the Indian subcontinent, the wholly different problems of Government which are to be found there, and the existence of eleven provinces in addition to the Central Government besides other subordinate governing authorities no doubt made it a more difficult task to select in advance an individual or individuals in whom these powers might be vested, as was done in the United Kingdom, but so far as we can see, there is nothing in the Act to prevent these powers being vested in any person or body, however insignificant or subordinate. It is one thing to confer a power to make a regulation empowering the Home Secretary to detain any person if he thinks it expedient to do so for a number of specified reasons; it is another thing altogether to confer a similar power on any person whom the Central Government may by rule choose to select, or to whom the Central Government may by rule give powers for the purpose. We are therefore left without any such guidance as the House of Lords had in (1942) A.C. 206 when we find ourselves called on to decide whether it is enough that the authority which is to be given the power of detention under the rules should satisfy itself that the suspicions which it entertains are reasonable. If the words in S.2 (2) (x) were the apprehension and detention in custody of any person suspected by the apprehending or detaining authority on grounds which appear to them to be reasonable, no difficulty would have arisen, but no such formula is used. But, even if we are to read the words as though they ran the apprehension and detention in custody of any person reasonably suspected by the apprehending or detaining authority, that does not seem to us necessary to imply that the authority's own belief in the reasonableness of their suspicions is not open to challenge.

It might well be argued that since the apprehending or detaining authority could be any person in India whom the Central Government chose to select when it framed its rules, it can never have been intended that any person could be detained without trial and by mere executive act unless there were reasonable grounds in fact for suspecting that he had brought himself within the scope of para (x). It will be said that the Central Government must be trusted only to make any rules vesting this power in responsible persons or authorities. The Central Government has in fact vested them in itself and in the Provincial Governments, that is to say, the Governor-General in Council and the Governor and those who advise him, whether Ministers or others. In the United Kingdom the number of persons detained under Regulation 18B, according to public statements made from time to time, has not been so large as to make it impossible for the Secretary of State to consider personally each case. We may take judicial notice of the fact that the numbers in India on the other hand have been, comparatively speaking, very large; and it is difficult to suppose that the Governor-General in Council or the Governors with their advisers have always been able to give their personal attention to each case; so that the consideration of the facts must have been left in very many instances, to put it no higher, to officials, sometimes, no doubt highly placed, but not necessarily

so. In these circumstances those in whom the legal right to detain is vested might not always find it easy to form an opinion of their own whether the person apprehended or detained is reasonably suspected or not. If this be so, it would certainly seem that the more natural construction of the words of para (x) is that there must be suspicions which are reasonable in fact and not merely suspicions which some as yet unspecified person or authority might regard as reasonable.

We do not however think it necessary to express a final opinion on the difficult point of construction involved in the first of the two questions we have propounded, in view of the answer which we find ourselves compelled to give to the second. The second question was whether a statutory power to make a rule for the detention of persons reasonably suspected of having acted, or acting or being about to act in a manner prejudicial to certain specified matters justifies the making of a rule which empowers Government to detain a person if it is satisfied that it is necessary to do so with a view to prevent him from acting in a manner prejudicial to any of the matters so specified, or to any of certain other specified matters as well. We need hardly point out the divergence between R.26 and para (x) of S.2 (2) of the Act which is clearly intended to be the authority for making the rule. The Act authorizes the making a rule for the detention of persons reasonably suspected of certain things, the rule would enable the Central Government or any Provincial Government to detain a person about whom it need have no suspicions, reasonable or unreasonable, that he has acted, is acting or is about to act in any prejudicial manner at all. The Government has only to be satisfied that with a view to preventing him from acting in a particular way it is necessary to detain him. The Government may come to the conclusion that it would be wiser to take no risks, and may therefore subject a person to preventive detention against whom there is no evidence or reasonable suspicion of past or present prejudicial act or of any actual intention of acting prejudicially; and R. 26 gives it power to do so. We can find nothing in para (x) which justifies a rule in such terms. The Legislature might have conferred upon the Central Government the power of making a rule as wide as this, but we are clear that it had not yet done so. A rule made under existing statutory powers can only confer a right to detain those persons who fall within the scope of para (x), that is, persons reasonably suspected of the things mentioned in that paragraph. There is no power to detain a person because the Government thinks that he may do something hereafter or because it may think that he is a man likely to do it, he must be a person about whom suspicions of the kind mentioned in the paragraph are reasonably entertained. The Legislature having set out in plain and unambiguous language in para (x) the scope of the rules which may be made providing for apprehension and detention in custody, it is not permissible to pray in aid the more general words in S.2 (1) in order to justify a rule which so plainly goes beyond the limits of para (x); though if para (x) were not in the Act at all, perhaps different considerations might apply; see 1917 A.C. 260. It may be that the Government has only made detention orders in the case of persons who are reasonably suspected in the manner required by para (x) but that is immaterial; the question is not what the Government have in fact done under the rule, but what the rule authorizes them to do; and in our opinion it is impossible so to interpret the rule to restrict its operation to the suspected persons of para (x). We are compelled therefore to hold that R.26 in its present form goes beyond the rule-making powers which the Legislature has thought fit to confer upon the Central Government and is for that reason invalid.

We have already drawn attention to the addition made to the rule in 1940, which empowers

Government to detain persons with a view to preventing them from acting in a manner prejudicial to 'His Majesty's relations with foreign powers or Indian States and the maintenance of peaceful conditions in tribal areas'. These additional words are clearly suggested by entry No. 1 in List I of the Legislative Lists, which authorizes the Central Legislature to legislate with respect to preventive detention for purposes connected with defence and the other matters which we have just mentioned. There can be no doubt therefore that it was competent for the Central Legislature to confer a power to make rules with respect to preventive detention in connexion with all these matters; but it seems to us very doubtful whether it can as yet be said to have done so. It has conferred the power to make rules with respect to detention for purposes connected with defence; and from the express mention of detention alone in para (x) it seems to follow that no power has been conferred to make rules with respect to detention for purposes connected with these other matters as such which it is plain that the language of entry No. 1 of List I regards as in a separate category from defence. We are therefore disposed to think that R.26 would be in any event beyond the rule making power which has been conferred, so far as regards the addition made to it by the Notification dated 3rd August 1940; but having regards however to the view which we take of the rule as a whole, it is unnecessary for us to consider whether or to what extent the addition is severable from the rest of the rule. We think it right to refer to certain observations made by one of the learned Judges in the Court below. He says this;

As I have pointed out, there is no doubt that it was competent to the Government of Bombay to detain the applicant on the ground that his detention was necessary in as much as he was acting in a manner prejudicial to the defence of British India and also for the maintenance of public order. It may be that the other two grounds given in the order are not justified by any of the items in Sch. 7 But if the two or even one of the two grounds are justified as coming within the competence of the Indian Legislature, I do not think it makes any difference to the validity of the order if the Government of Bombay proceed to give further reasons which are not well founded.

We doubt whether this is a correct statement of the law. If a detaining authority gives four reasons for detaining a man, without distinguishing between them, and any two or three of the reasons are held to be bad, it can never be certain to what extent the bad reasons operated on the mind of the authority or whether the detention order would have been made at all if only one or two good reasons had been before them. We confess that an order in the terms of that under which the appellant in the present case has been detained fills us with uneasiness. It recites that the Government of Bombay

is satisfied that, with a view to preventing the said Keshav Talpade from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order and the efficient prosecution of the war, 'it is necessary to make an order of detention against him.

This reads like a mere mechanical recital of the language of R. 26. We do not know the evidence which persuaded the Government of Bombay that it was necessary to prevent the appellant from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order and the efficient prosecution of the war, but we may be forgiven for wondering whether a person who is described as an authorized petition writer on the insolvency side of the Bombay High Court was really as dangerous a character as the recital of all these four grounds in the order of detention suggests. The order does nothing to remove the apprehension already expressed that many cases the persons in whom this grave power is vested may have had no opportunity of applying their minds to the facts of

every case which comes before them. Our attention was drawn in the course of the argument to S.16 of the Act. Section 16 (1) provides;

No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

We are clearly of opinion that where the order is made under or by virtue of a rule which is invalid and therefore of no force or effect, the order is a nullity and S.16 (1) has no application. We recognise that our decision may be a cause of inconvenience and possibly of embarrassment, even though temporarily, to the executive authority. We regret that this would be so, especially in these difficult times; but we venture to express an earnest hope that greater care may be taken hereafter to secure that powers of this extraordinary kind which may affect, and indeed have affected, the liberty of so many of the King's subjects in India, may be defined with great precision and exactitude, so as to reduce to as small a compass as possible the risk that persons may find themselves apprehended and detained without Legal warrant. The appeal will be allowed and the case remitted of the High Court of Bombay with a direction to the Court to dispose of the appellant's application in the light of the observations made in our judgment

Appeal allowed.

R.K

For the reaction of the Government, See Doc 30 para 4 and also see Docs 28 and

28: Official Note on the Judgment in Talpade's case (extracts)

File No. 44/57/43 - Home Poll (I)
[N M]

Federal Court Judgment in Talpade's Case

[A] We desire also to draw the attention of those who have the power of making orders of detention to what we have thought it right to say with regard to the obligation which lies on them to specify as clearly and accurately as they can the true grounds on which the order is made.

Note by Home Department

As regards [A] I suggest that the Court was going entirely beyond its function in suggesting that the Executive authorities should give reasons for their action when passing orders of detention under Defence Rule 26. It is perfectly obvious that in wartime we may have to detain people without trial on extremely good evidence derived from sources of the utmost secrecy and that we should be gravely endangering the safety of the realm if we were under any obligation to state our reasons in every case. I imagine that the Home Secretary in England is under no such obligation: and it would obviously be undesirable to state reasons in some cases and not in others.

R. Tottenham, 24.4.43.

29: Baldeo Das on behalf of Kamlapati Tewari – (Applicant) v. Emperor [Iqbal Ahmad C.J. (30 April 1943)]

AIR, Vol. 30, 1943, Allahabad, pp. 331–4

Criminal Misc. Case No. 356 of 1943, Decided on 30th April 1943.

Sir Tej Bahadur Sapru,* P.N. Sapru and T.N. Sapru --- for Applicant. Government Advocate
– for the Crown.

Order

This is an application under S.491, Criminal P.C., and was filed on 27th April last by one Baldeva Das with a view to secure the release of Pt. Kamlapati Tewari from detention under an order purporting to be made under R.26 of the Defence of India Rules. The application is supported by an affidavit which shows that Kamlapati Tewari, who is a member of the Legislative Assembly, United Provinces, attended a meeting of the All India Congress Committee at Bombay and, on his return journey from Bombay was arrested at the Allahabad Railway Station on the night of 10th August 1942, and is at present detained under R. 26. Sir Tej Bahadur Sapru, who appeared for the applicant, contended that R.26 of the Defence of India Rules was invalid and submitted that it had been so held in a recent case by the Federal Court.¹ On 27th April I adjourned the hearing of the application to this date to enable Sir Tej Bahadur Sapru to file a certified copy of the judgment of the Federal Court and he has today filed a copy of that judgment of the Federal Court (Case No. 5 1943). A perusal of the copy shows that the Federal Court has held that rule 26 in its present form goes beyond the rule making powers which the Legislature has thought fit to confer upon the Central Government and is for that reason invalid.

If the matter rested there, there would be no answer to the present application. The Government Advocate, however, submitted that, in the interval that elapsed between 27th April and today's date the Governor-General had passed an Ordinance that nullified the effect of the decision of the Federal Court and in support of this submission, he produced a copy of an Extraordinary Gazette of India dated 29th April 1943. The Ordinance relied upon by the Government Advocate is published in this Gazette and is Ordinance No. 14 of 1943. The Ordinance is headed as 'An Ordinance further to amend the Defence of India Act, 1939' and the preamble to the Ordinance is as follows:

'Whereas an emergency has arisen which makes it necessary further to amend the Defence of India Act, 1939 (35 of 1939) for the purpose here in after appearing:

Now, therefore, I exercise, of the powers conferred by S.72, Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. V.C. 2) the Governor General is pleased to make and promulgate the following Ordinance.

The Ordinance contains three sections which read as follows:

1. Short title and commencement–

- (2) This Ordinance may be called the Defence of India (Amendment) Ordinance, 1943.
- (2) It shall come into force at once.

2. Substitution of new clause for cl. (x) of S.2 (2) Act 35 of 1939: For Cl. (x) of Sub-section (2), Defence of India Act, 1939 (35 of 1939), the following clause shall be substituted and shall be deemed always to have been substituted, namely:

(X) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain as the case may be suspects on grounds appearing to such authority to be reasonable, of being of hostile origin, or of having acted, acting, being about to act, or being likely to act in a manner prejudicial to the public safety or interest, the defence of British India, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war, or with respect to whom such authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him from acting in any such prejudicial manner, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do or abstain from doing anything.

3. Validity of orders made under R.26, Defence of India Rules: For the removal of doubts it is hereby enacted that no order heretofore made against any person under R.26 of the Defence of India Rules shall be deemed to be invalid or shall be called in question on the ground merely that the said rule purported to confer powers in excess of the powers that might at the time the said rule was made be lawfully conferred by a rule made or deemed to have been made under S.2, Defence of India Act, 1939.'

The Ordinance, *prima facie*, puts the validity of rule 26 beyond question and furnishes a complete answer to the application of Baldeva Das, but the validity of the Ordinance itself was questioned by Sir Tej Bahadur Sapru. He contended that by S.72, Government of India Act as set out in sch. 9, Government of India Act, 1935, the Governor-General was empowered to make and promulgate ordinances only with prospective and not with retrospective effect. He, therefore, maintained that if the ordinance purported to amend the Defence of India Act with retrospective effect it was *ultra vires* the Governor-General. In the alternative he contended that on a true interpretation the Ordinance could only operate from the date it was promulgated, and as such, could not adversely affect the application of Baldeva Das that was filed on 27th April, a day before the Ordinance was promulgated. In my judgment there is no force in these contentions. Section 72, Government of India Act, as set out in sch. 9, Government of India Act, 1935, gives wide and extensive power to the Governor-General to make and promulgate ordinance and reads as follows:

72. The Governor General may, in cases of emergency, make and promulgate ordinances for the peace and good Government of British India or any part thereof, and any ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature, but the power of making ordinances under this section is subject to the like restrictions as the power of the Indian Legislature to make laws; and any ordinance made under this section is subject to the disallowance as an Act passed by the Indian Legislature, and may be controlled or superseded by any such Act.

In view of this provision, it is clear that, though the power to make ordinances' is subject to like restrictions as the power of the Indian Legislature to make laws', an ordinance that does not contravene such restrictions has, when made and promulgated, 'the like force of law as an Act passed by the Indian Legislature.' It was not suggested the Governor-General in making and promulgating the Ordinance in question transgressed any such restrictions. Further it is not and cannot be disputed that it is within the competence of the Indian Legislature to

make laws with retrospective effect. The Governor-General is, therefore, competent to make and promulgate ordinance giving the same retrospective effect. It follows that the Governor-General had the power to make amendments in the Defence of India Act and give such amendments retrospective effect.

The question, however, remains whether the amendments introduced by the Ordinance in the Defence of India Act are with retrospective effect. In my judgment, they are. By S.2 of the Ordinance a new clause has been substituted for cl. (x) of S.2 (2), Defence of India Act, and S.2 of the Ordinance does not merely substitute the new clause for the previous one but proceeds to enjoin that the new clause 'shall be deemed always to have been substituted'. The words just quoted are of clear and unambiguous import and plainly indicate that the substituted clause must always be deemed to have existed in the Defence of India Act. The amendment made in that Act by the Ordinance is, therefore, to my mind, with retrospective effect. The historical background of the Ordinance also unmistakably points to the same conclusion. Sub-section (1) of S.2, Defence of India Act, confers wide powers on the Central Government to make rules for securing the objects specified therein and enacts as follows:

2. (1) The Central Government may by notification in the official Gazette, make such rules as appear to it to be necessary or expedient for securing the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies and services essential to the life of the community. . . .

[*Omitted: Remainder of document – Ed.*]

1 The reference is to Document No. 27 above

30: Government of India to all Provincial Governments

File No. 15/6/43 – Home Poll (I)

[NAI]

Government of India.

Home Department.

Express Letter

From

Home, New Delhi.

To

All Provincial Governments.

No. 15/6/43 – Poll (I)

New Delhi, the 1st May, 1943.

Subject: Observations of the Federal Court regarding the exercise of the powers conferred by Rule 26 of the Defence of India Rules.

The Federal Court in its recent judgment appears to have been under the mistaken impression that all orders under Defence Rule 26 had been issued in the name, and under the authority,

of the Central or a Provincial Government, and it, therefore, formed the conclusion, considering the total number of orders issued, that each one of them could not have received the attention it deserved from the issuing authority. The Court seems to have overlooked the powers of delegation under section 2 (4) and (5) of the Defence of India Act and the fact, in consequence of such delegation, that each order required the personal 'satisfaction' of a responsible official. Nevertheless, we have little doubt that the main consideration which weighed with the Federal Court was the view, which we cannot but share, that powers of detention without trial are wholly exceptional and must be exercised with the greatest care.

2. We have no intention of depriving ourselves or Provincial Governments of the powers of delegation referred to above, since we consider them essential to deal with extreme emergencies, especially when communications are upset. But we feel, and trust you will agree, that delegation of power to detain without trial under Defence Rule 26 (1) (b) should not be delegated to any subordinate authority except for the period of such emergencies and that any delegation made should be cancelled as soon as the emergency ceases to exist. It seems to us most doubtful whether such an emergency does now exist in any part of India and we accordingly request to you to consider, if you have not already done so the cancelling of any directions made under Defence of India Act 2 (5) so far as Defence Rule 26 (1) (b) is concerned. Whether the other powers under that rule should be left to authorities such as District Magistrates is a matter for your discretion, but we think they should certainly not be exercised in normal times by any lower authority.

In addition to the action suggested above, we also suggest (and this really amounts only to an extension of the scope of our letter No. 3/30/43 - Poll (I), dated 3rd April 1943¹) that you should review all detention orders passed by subordinate officers since August the 9th 1942. Where you are satisfied that these orders must remain in force, we are inclined to think there might be some advantage in replacing them by orders issued by the Provincial Governments itself.

4. Finally there is the question of the form in which detention orders under Defence Rule 26 should in future be issued. The Federal Court seems to have been perturbed by the practice of reciting in the order all or most of the objects in relation to which such an order may be issued and to have implied that the correct course is to specify the particular object or objects to which the action taken is to be related. No order can, of course, be expected to reveal the evidence (much of which may be secret) on which the authority concerned is satisfied that it is necessary, but we agree that in future it will be better to quote in the order only those grounds referred to in the rule which have a direct bearing on the case.

R. Tottenham.

Addl. Secy. to the Govt. of India.

¹ Doc. 30 in Chapter I - Section B



31: Review of an article in *Janayuddha*

Govt. of Bengal Office of the D.C.P. (Sp. Br) File No. SK 562/42
[Bengal State Archives]

31.5.43.

Review of *Janayuddha*

In the article under the Caption '*Sudhu Mukher Kathai Kaj Hai Na*' (Nothing could be done by words only) it says that inspite of repeated and renewed hopes by the authorities to solve the food problem, the situation did not improve. Over and above this the coal problem was again in view inspite of very satisfactory work by the volunteers of the Defence Committee, the authorities were not co-operating with the Committee. So it demanded the co-operation of authorities with the Defence Committee in solving the food problem.

In the editorial column the heading '*Congress Netader Mukti Chai*' (we demand the release of Congress leaders), it says that as a result of the decision of the Federal Court declaring the Rule 26 of D.I. Rules as illegal, India did not get back their leaders released but got another Ordinance. This proved that the supreme power of the Government of India was not with the Federal Court but in the hand of the Viceroy. This also proved that the power of releasing the Congress leaders was not in the hands of the legal professionals, but in the hands of the volunteers of the country. They could achieve their aim only by national strength. The new Ordinance of the Viceroy was standing in the way of the country's demand for meetings of Gandhi and Jinnah for the national unity. The days are coming when the decision of the Federal Court and the Viceroy's Ordinance will be turned into small past incidents. Let India raise the demand of national unity and the release of the political leaders.



32 District Magistrate, West Godavari to the Chief Secretary, Govt. of Madras — Security prisoners in Coastal Andhra

Govt. of Madras, U.S. Files, File No. 26/1944
[TNA]

R.C. No. #/59- 43

From
Sir Rao Bahadur T.S. Rajamayya, B.A.,
District Magistrate, West Godavari,
Ellore.

To
The Chief Secretary to the Government of Madras,
Public (Gl) Department,
Fort Saint George,
Madras.

Subject: Political agitation — C.D. Movement — West Godavari District — Persons detained under Rule 26 of the Defence of India Rules — Particulars — Reported.

Ref. Government Memorandum No. S/856- 2/43 dated 22nd May 1943.¹

Sir,

I enclose a statement showing the particulars of the orders issued by the District Magistrate since the 9th August 1942 under Rule 26 of the Defence of India Rules. All these cases have subsequently been covered by Government Orders. Orders under the Rule were not passed either by the Additional District Magistrate or by the sub Divisional Magistrates in this district during the above period.

(2) With regard to items (1) and (2) of the statement, orders under Rule 26 of the Defence of India Rules were passed by the District Magistrate first and subsequently the Government in G.O. No. MS 2872, public (Gl) Department, dated 15-9-42 passed orders under sub rule 5 of Rule 26 for the detention of the two persons in the Central Jail, Vellore. A detailed report was already submitted to the Government in the above two cases in this office R.O.C. Cl-921/M-Confdl/42-IV-(b) dated 6-9-42 and R.O.C. Cl-921-M/Confdl/42-IV(a) dated 6-9-42. In all other cases noted in the statement, reports were submitted to the Government recommending the issue of orders under rule 26 of the Defence of India Rules; but as orders were not received from the Government before the expiry of the 15 days' time allowed under rule 129 of the Defence of India Rules, orders under rule 26 were passed by the District Magistrate for their detention in the local sub jails. In all these cases the orders of the Government were subsequently received and the District Magistrate's orders were thereupon revoked and the persons concerned were sent for detention in the Vellore Central Jail under the Government Orders. The No. and date of the Government orders in these cases are noted in the statement.

(3) Copies² of all the orders passed under Rule 26 of the Defence of India Rules are submitted as directed.

**Statement showing the names of the persons ordered to be detained
under Rule 26 of the Defence of India Rules in the
West Godavari District**

| <i>S. No.</i> | <i>Name of the person</i> | <i>No. & date of the District Magistrate order under rule 26 of the Def. of India Rules</i> | <i>No. & date of the Govt. order</i> |
|-------------------|--|---|---|
| 1. | Indukuri Subbaraju | ROC C1-921/M-42 IV (a) dt 1-9-42 | GO No. MS 28 Public (G1) Dept. dt 15-9-42 |
| 2. | P. Ramachandra Rao | ROC C1-921M/42 IV (b) dt 4-9-42 | GO No. MS 28 Public (G1) Dept. dt 15-9-42 |
| 3. | Boddu Pail. Lakshmi Narasimham | ROC C1 921-M342 IV dt 9-9-42 | GO No. MS 2827 Public (G1) Dept. dt 11-9-1942 |
| 4. | Addepalli Satyanarayanamurti | ROC C1-921-M42 IV (e) dt 11-9-42 | GO No. MS 2827 Public (G1) Dept. dt 11-9-1942 |
| 5. | Kakarlamudi Bhaskara Rao | ROC C1-921 M42 IV (f) dt 11-9-42 | GO No. MS 2827 Public (G1) Dept. dt 11-9-1942 |
| 6. | Vadlapatla Gangaraju | ROC C1-921 M/42 dt 28-9-42 | GO No. MS 3070 Public (G1) Dept. dt 28-9-42 |
| 7. | B.S. Rangasayi | ROC C1-921-M-42 IV (n) dt 28-10-42 | GO No. MS 3414 Public (G1) Dept. dt 24-10-42/ 2-11-42 |
| 8. | Pretepu Mrutyantjayudu | ROC C1-921-M/42 IV dt 8-11-42 | GO No. MS 3596 Public (G1) Dept. dt 9-11-42 |
| 9. | Kammula Subbayya | ROC B7-921-M/42 IV dt 20-12-42 | GO No. MS 4031 Public (G1) Dept. dt 19-12-42. |
| 10. | Geda Sreemannarayana Lingam Rajagopalarao Garimalla Subrahmanyam | ROC No. By-921 M-42 IV dt 7-1-43 | GO No. MS 80 Public (G1) Dept. dt 8-1-1943 |
| 11. | Bhupathiraju Lakshmi Narasimharaju | ROC B7 921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 12. | Uddaraju Ramaraju | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 13. | Vallabhaneni Koteswara Rao | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 14. | Kalagara Krishnarao | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 15. | Kotipalli Appanna | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 16. | Viriyala Venkatarao | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |

| <i>S. No.</i> | <i>Name of the person</i> | <i>No. & date of the District Magistrate order under rule 26 of the Def. of India Rules</i> | <i>No. & date of the Govt. order</i> |
|---------------|---------------------------|---|--|
| 17. | Puram Janardhana Gupta | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 18. | Kaugolla Janardhana Gupta | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 19. | Sirla Brahmaam | ROC B7-921/M-42 IV dt 3-2-43 | GO No. MS 404 Public (G1) Dept. dt 5-2-1943 |
| 20. | J. Purushotham | ROC B7-921-M42 IV dt 13-4-43 | GO No. MS 1036 Public (G1) Dept. dt 12-4-43/ 15-4-43 |
| | | | District Magistrate West Godavari |

1 Not printed

2 Not printed

33: Shib Nath Banerjee' and others – (Petitioners) v. A.E. Porter and others – Opposite Party [Mitter, Khundkar and Sen J.J. Special Bench (3 June 1943)]

AIR, Vol. 30, 1943, Calcutta, pp. 377-417

Miscellaneous cases Nos 54 to 62 of 1943, *Decided on 3rd June 1943*. intra

A.K. Fazlul Haque, N.C. Chatterjee, J.C. Gupta, Kumud Bandhu Bagchi, R.S. Bachawat, Sudhansu Sen, P.K. Bose, Subimal Roy, S.M. Murshed and Sadhan Chandra Gupta for Petitioners.

S.M. Bose' (Acting Advocate General), J.N. Majumdar (Standing Counsel), and Ch. Roy Choudhury and M.N. Ghose for the Crown.

Mitter J. – The nine persons on whose behalf applications under S.491. Criminal P.C., have been made before us by their relations have been detained in different jails in pursuance of orders passed under R. 26, Defence of India Rules, on diverse dates between 24th October 1940 and 8th March 1943. Those applications were made on 24th April 1943 after the Federal Court had declared their said rule to be ultra vires S.2, sub.S.(2), cl. (x) Defence of India Act (35 of 1939), in *Keshav Talpade v. Emperor*.¹ On the same date, nine rules were issued on the Crown to shew cause why the said persons should not be released. Those rules came on for hearing before us on 7th May 1943. At an early stage of the hearing, seven out of the nine detenus applied to us to give them facilities to swear affidavits in jail. We granted their prayer.

They swore affidavits and those affidavits have been put on the record with liberty to the Crown to file affidavits in answer. Another affidavit sworn by Dr Nalinaksha Sanyal,* a member of the Bengal Legislative Assembly and a first cousin of Sasanka Sekhar Sannyal, one of the detenus, was put before us. The Crown objected to the reception of that affidavit but we overruled that objection and directed that affidavit to be put on the record, the Crown being given liberty to file an affidavit in answer. At the time when we admitted Dr Nalinaksha Sanyal's affidavit we intimated that we would give reasons in our judgment for admitting the said affidavit.

At the time when Dr Nalinaksha's affidavit was put in, the advocate for the petitioners stated that as that affidavit embodied only the proceeding in the Legislative Assembly which would be relevant in all the nine cases before as it would be a needless repetition to file affidavit of exactly the same nature in the other eight cases. They accordingly prayed verbally that the formality of having eight more affidavits of the same nature, one in each of the other eight cases, may be dispensed with and Dr Nalinaksha Sanyal's affidavit may be allowed to be used in all the nine cases which we were hearing together. To that course the learned Advocate-General did not object and we allowed the prayer. The Crown has put in an affidavit in answer affirmed by Mr Porter,* who at all material times had been the Additional Secretary in the Home Department of the Government of Bengal, to meet the allegations made in the affidavit of the seven detenus and those made in the affidavit of Dr Nalinaksha Sanyal. The orders passed on the nine detenus under R. 26 have produced by the Crown for our perusal. True copies of those orders have been put on the record. After the decision of the Federal Court in Keshav Talpade's case the Governor-General has, on 28th April 1943, made and promulgated an Ordinance (ordinance No. 14 of 1943, hereafter to be called the Ordinance) under S.72 of Sch. 9. Government of India Act. That Ordinance is as follows:

'Whereas an emergency has arisen which makes it necessary further to amend the Defence of India Act, 1939 (35 pf 1939) for the purpose herein after appearing:

Now therefore in exercise of the powers conferred by S.72, Government of India Act, as set out in Sch. 9, Government of India Act (26 Geo. V.C.2) the Governor-General is pleased to make and promulgate the following Ordinance;

1. Short title and Commencement — (1) This Ordinance may be called the Defence of India (Amendment) Ordinance, 1943. (2) It shall come into force at once.

2. Substitution of new clause for cl. (r) of S.2 (2), Act 35 of 1939 — For (x) of Sub-section (2) of S.2. Defence of India Act, 1939 (35 of 1939), the following clause shall be substituted, and shall be deemed always to have substituted namely;

(x) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain as the case may be suspects, on grounds, appearing to such authority to be reasonable, of being of hostile origin, or having acted, acting, being about to act, or being likely to act a manner prejudicial to the public safety or interest, the defence of British India, the maintenance of public order. His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful relations in tribal areas or the efficient prosecution of the war, or in respect of whom such authority is satisfied that his apprehension, and detention are necessary for the purpose of preventing him from acting in such prejudicial manner, the prohibition of such person from entering or residing or remaining in any area, and the compelling of such person to reside and remain in any area, or to do or abstain from doing anything.

3. Validity of orders under Rule 26, Defence of India Rules. — For the removal of doubts it is hereby enacted that no order therefore made against any person under R. 26 of the Defence of India Rules shall be deemed to be invalid or shall be called in question on the

ground merely that the said rule purported to confer powers in excess of the powers that might at the time the said rule was made be lawfully conferred by a rule made or deemed to have been made under S.2, Defence of India Act, 1939.'

The underlined (here italicized) portions of S.2 of the Ordinance represent the amendments made to S.2, sub-section (2), cl. (x) Defence of India Act, 1939. Rule 26 of the Defence of India Rules was left intact, but by the aforesaid amendment of S.2 (2), cl. (x), Defence of India Act, 1939, the ground on which the Federal Court had pronounced R. 26 to be ultra vires was cut away. To regularize the detentions that had been made in the past by orders made under R. 26 and to prevent the legality of those orders for detention being challenged in Courts the amendment was given retrospective operation and S.3 of the Ordinance was enacted with the same purpose in view. The Crown pleads this ordinance in answer to the claim for release of the nine detenus.

The petitioners have urged the following points:

- (1) That the whole of S.2, Defence of India Act, both in its original and amended forms, is ultra vires the Indian Legislature. (2) That the portion of cl. (x) of S.2 (2) of the said Act, which has been added by the amendment made by the Ordinance is ultra vires the Indian Legislature and accordingly of the Governor-General's power under S.72 of Sch. 9. The corresponding portions of R. 26 of the Defence of India Rules are bad and consequently the orders of detention in the cases we have before us are bad. . . .
- (3) That the Governor-General has no power to repeal or amend directly any Act of the Federal Legislature by an Ordinance made and promulgated under S.72, of sch. 9, Government of India Act, 1935. (4) That it is only the Central Indian Legislature that has the power to repeal or amend an Act of the Central India Legislature passed under the provisions of S.102, Government of India Act. (5) That the Governor-General has no power to legislate by such an ordinance on any subject enumerated in List II, of Sch. 7, Government of India Act. (6) That in any event the Governor-General has no power to give retrospective operation to such an ordinance. (7) That in any event the Ordinance (14 of 1943) cannot affect proceedings which were pending at the date of its promulgation. (8) That S.3 of the Ordinance (14 of 1943) has no independent existence apart from S.2 of the said Ordinance and must stand or fall with that section (9) That Rule 26, defence of Indian Rules, had no existence in the eye of law on 29th September 1939, when the Defence of India Act was passed and so does not exist even now either in its original or amended forms. (10) That even if R.26 be intra vires the detention of the nine persons whose cases are before us was improper.

(1) *Section 2, Defence of India Act, is ultra vires.*

In Talpade's case the Federal Court has decided that the Defence of India Act is not ultra vires the powers of the Central Indian Legislature, that most of the matters covered by the general words in S.2(1) as well as by the more precise provisions set out in sub-section. (2) with its 35 paragraphs are covered by Lists, I, and III of Sch.7, Government of India Act. That judgment also indicates that preventive detention for the defence of British India being in item 1 of List I, the Central Indian Legislature would have been competent to legislate on that subject. That omission in cl. (x) of S.2 (2), on the basis of which R. 26, Defence of India Rules, was pronounced to be bad, has now been supplied by Ordinance 14 of 1943. Neither the Federal Court's judgment or the amendment made by the said ordinance, however, concludes this point by reason of the form in which it has been urged before us. For the

purpose of dealing with this point I would assume that Ordinance 14 of 1943 is a good enactment, and that S.2 (1) and in particular cl. (x) of S.2 (2), Defence of India Act, both in its original and final shape, includes matters which are in list I and List II, and none of the matters go beyond the three Lists of schedule 7.

The arguments before us have proceeded on these lines; (a) that on a declaration of grave emergency made by the Governor-General under S.102, Government of India Act, the Central Indian Legislature no doubt acquires the power to legislate on matters enumerated in List II, but then it can legislate on those matters for one Province at a time, that is to say, one such Act cannot comprise more than one Province, and (b) in any case it cannot in one enactment include in an inseparable manner matters coming in List I and List II. These two questions depend solely upon the interpretation of S.102, Government of India Act. The questions raised are of first impression. I can at once say that I cannot accept those contentions. For deciding the points raised. SS.99 (1), 100 and 102 must be read together, and the definition of the word 'Province' as given in S.46 (3), Government of India Act, must be borne in mind. It means the Governor's province and does not include the areas under the administration of Chief Commissioners. Section 100, Sub-section. (4) has an important bearing on the construction of the phrase, 'to make laws for a province' used in S.102 (1). It is on this phrase only that the first part of the contention of the petitioners' advocates is based. Leaving out of consideration British Baluchistan, which is specially dealt with in S.95, the Central Indian Legislature has powers to legislate in respect of matters covered by List II of all areas not comprised in Governor's provinces, e.g. for the Chief Commissioners' Provinces apart from the provisions of S.102. Apart from S.102, it cannot legislate on matters coming within List II for the Governors provinces. Section 99 (1) defines the local extent of Acts passed by the Central Indian Legislature (Federal Legislature during the transitional period), and S.100 distributes between the Centre and the provinces the subjects of legislation. The phrase 'make laws for a province' used in S.102 (1), accordingly does not mean 'make laws for one particular province at a time' That phrase had to be used in S.102 (1) because of the language employed in S.100, sub-section (4). The real effect of S.102 (1) in any judgment is to destroy the separation of the subject matter of legislation in regard to Governors provinces which had been created by S.100 sub-section (3) on a grave emergency being declared by the Governor-General. On such a declaration list II is to be regarded as part and parcel of List I and the Central Indian Legislature which has by virtue of S.99 (1) the power to legislate over the whole of British India, would acquire the power to legislate over whole of the said area (which necessarily includes all the Governors' Provinces) in respect of matters contained in List II. There is thus nothing in the Government of India Act which would prevent the Central Indian Legislature from making one enactment which would have operation over more than one Governor's Province.

In construing S.102 (1) I have already indicated my view that List II is fused, so to say, into List I on the declaration of grave emergency. If there was nothing more in the other parts of S.102, the Central Indian Legislature would have the power to legislate by one enactment on matters of both those lists in an inseparable manner. It had from before the power to legislate over the whole of British India, which covers the areas under the administration of Governors in matters coming in List I and by reason of the declaration of grave emergency it acquires the power to legislate in respect of matters mentioned in List II for areas included in Governor's Provinces. To meet these conclusions the learned advocates for the petitioners refer us to sub-section (4) of section 102. The argument is that an Act passed by the Central Indian Legislature on matter contained in List I has ordinarily

permanent duration. Unless the particular enactment expressly limits its duration it would be on the statute book till expressly repealed by it. An Act however dealing with matters contained in List II passed by the Central Indian Legislature in pursuance of S.102 would be of limited duration unless the proclamation of emergency had been approved by Parliament, such an Act would last for one year from the date of the proclamation of emergency. The petitioners' advocates say that if these conclusions are sound, and I hold that they are, after the expiry of a year from the date of the proclamation of emergency a part of the enactment that which dealt with List I would remain on the statute book and the other part that which dealt with subjects mentioned in List II would cease to have effect, and if matters of the two lists were essentially and inseparably connected in substance in that enactment, the part that would remain would be unworkable. They accordingly say that as parliament never intended such a result it must be held that the Central Indian Legislature has no power to Legislate on subjects of Lists I and II in that manner. The argument, in my judgment, is of no substance. It proceeds upon an entire misconception of the provisions of S.102, S. Sub-section (4). The Central Indian Legislature can say in express terms that a particular enactment on a subject mentioned in List I shall have force for such a limited period of time which it chooses. By combining the matters mentioned in List I with matters mentioned in List II it says by necessary implication, what could have been said in express terms, that provisions made in the enactment which bears upon the subjects of List I would cease to have effect at the same time when the Provisions of that enactment relating to matters mentioned in List II would cease to have operation by virtue of the Provisions of S.102, Sub-section (4) I accordingly overrule ground No. 1.

(2) *The portion added to S.2 (2) Cl. (x) by ordinance 14 of 1943 is ultra vires*

The amendment introduces detention for preventing a person from acting in a manner prejudicial to the public safety of interest, the defence of British India, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war. The argument is that defence of British India is not one of the subjects enumerated in the Lists of Sch. 7, Government of India Act, and of the subject mentioned above 'preventive detention for reasons connected with public order' is the only subject enumerated in those lists, that subject being one of the subjects mentioned in item 1 of List II. I am not convinced that this is correct. In the first place, I cannot say that Parliament kept away all matters concerning defence of British India from the province of the Indian Legislatures. Items 1, 2, 3, 17, 29 and 30 of List I in some form or other have direct relation to defence and war, and items 1 and 29 of List II and No. 34 of List III may in some circumstance have relation to those subjects. In the second place, the last part of item 1 of List I gives power to the Central Indian Legislature to make laws dealing with preventive detention for reasons of state connected with defence and external affairs. All that is required is that there should be a connexion with defence. In my judgment, all the items mentioned in s.2 (2) Cl. (x) as amended by the Ordinance are intimately connected with defence of British India. Efficient prosecution of this war is directly connected with the defence of British India, when Japan is almost knocking at the gates of India. On the maintenance of public safety, interest and public order, on the maintenances of His Majesty's relations with foreign powers or Indian States and on the maintenance of peaceful conditions in tribal areas, which border on British India, depend the effective prosecution of this war and so those matters are connected with defence of British India.

I am prepared to go further and to hold that all the matters mentioned in clause (x) of S.2 (2), Defence of India Act, and in the amendment made thereto by the Ordinance fall within List I, being matters connected with defence and that more of them comes within List II. Items of List I may overlap items of List II but the pith and substance of the particular legislative enactment must be looked at to see if the subject-matter of that enactment comes within items of List I or List II. On this view the second portion of this ground as urged before us does not arise I accordingly overrule this ground also.

(3) Governor-General has no power to repeal or amend an act of the Central Indian legislature

This point has been urged before us by the petitioners on the following basis: (a) An ordinance made and promulgated under S.72 of Sch. 9 being by nature of a limited duration cannot repeal or amend an Act of the Legislature which is by nature of unlimited duration. (b) When two equally competent legislative bodies deriving the authority to legislate from the same paramount Legislature, namely the Parliament, can operate on the same field, one of such bodies cannot directly repeal or amend the laws passed by the other unless the authority which created those two legislative bodies had expressly conferred on one the power of repealing or amending the enactments made by the other. (c) That Parliament never intended to confer the power on the Governor-General to directly repeal or amend an Act of the Central Indian Legislature.

I propose to deal with these grounds together. I may at once say that if I could have answered grounds (b) and (c) in favour of the Crown, I would have felt no difficulty in rejecting ground (a). There is, in my judgment, no principle which would prevent a Legislature directly to repeal or amend its own permanent enactment by an enactment of a temporary nature. The power to repeal or amend flows from the power to enact. Repeal by a temporary measure would be construed as the suspension for a limited period of time of the provisions of the earlier permanent statute. The question in substance would be a matter of interpretation only. This is the view which has been expressed by Lord Ellenborough C.J. in (1809) 10 East 569 at p. 573. It is, however, quite a different question when one legislative body attempts directly, that is by the expressed force of its provision, to repeal or amend the enactments of another equally competent legislative body.

The Central Indian legislature derives its authority and powers from Parliament. The Governor-General, who also derives authority from Parliament, exercises legislative functions on fulfilling the conditions required by S.72 of Sch. 9. Emergency gives him the power to legislate for peace and good Government of India. He then becomes a legislative organ. The same Act of Parliament gives him the power to legislate under S.72, which gives authority to the Central Indian Legislature to legislate. He cannot legislate on matters on which the Central Indian Legislature cannot legislate. The only difference is that an emergency must exist (of which he is the sole judge) before he can embark on legislation by Ordinance, and the legislation must be for the peace and good Government of British India. But whether the particular provisions which he chooses to enact would promote peace or good Government is a matter which is entirely within his judgment. The propriety of the particular piece of legislation cannot be questioned by any outside body: 58 I.A. 169. But he cannot act in excess of the powers conferred on him by Parliament. Subject to what has been indicated above, he cannot make a provision in his ordinance that the validity of its provisions or a particular provision therein shall not be challenged in Courts of judicature in India on the ground of ultra vires his powers. Such a provision would be illegal and would be discarded by Courts,

on the principle that he would thereby be able to extend his power to make laws, which Parliament never intended for him. I am making these general observations in view of the provisions of Ordinance 14 of 1943 and by way of introduction.

On an emergency the Governor-General encroaches upon the field of the Central Indian Legislature. The Ordinances made and promulgated under S.72 of Sch. 9 during the transitional period and those made and promulgated under S.43 after the introduction of part II, Government of India Act, have the same force and effect as Acts passed by the Central Indian Legislature, the Indian Legislature during the transitional period and the Federal Legislature after part II has come into operation. There is thus the possibility of an Ordinance made by the Governor-General on an emergency coming into conflict with an Act passed by the Central Indian Legislature. The learned Advocate-General argues, and I dare say rightly that when such a contingency happens, it must be held that the provisions of the Ordinance would prevail over these of the Act of the Central Legislature. There are two sound principles behind that contention of the learned Advocate-General. One is that where there are two legislative enactments having the same force and effect, the last in point of time must prevail. The other principle is that the special enactment would prevail over the general. I must therefore accept the contention that by creating a repugnancy the Governor-General can destroy or mutilate an Act of the Central Indian Legislature by an Ordinance made and promulgated by him on an emergency. The next step in the argument of the learned Advocate-General requires careful consideration. It is, that when the Governor-General can indirectly do away with or modify an Act of the Central Indian Legislature, there is no reason why he cannot directly, that is to say by the express provisions of his Ordinance, repeal or amend an Act of the Central Indian Legislature. The principle on which he stands, using his words, is that an authority can do that directly which it can do indirectly. At first sight his contention would appear to be a sound one, but on careful consideration I do not consider it to be so.

Where one legislative body seeks to do away with the enactment of another legislative body equally competent to legislate on the subject by creating what appears *prima facie* to be a repugnancy, it is exclusively within the province of the Courts to decide whether in fact the repugnancy exist, and if it does, to decide which enactment should prevail. The question whether a repugnancy actually exists is often a difficult question.

[*Omitted: A historical survey of the background to the Privy Council appeal case re. Attorney-General for Ontario V. Attorney-General for the Dominion of Canada. (1896 A.C. 348) - Ed.*]

What I have stated above is a necessary background for understanding the passage at that page which follows the passage which I have quoted in the earlier part of my judgment. The point there was and I have already indicated how that point was a material point in that case-whether one Legislature, in that case the Dominion Parliament, could by the express provisions of its statute and by sole force thereof repeal the provisions of a statute passed by another Legislature, in that case the Legislature of the province of Ontario, both the legislatures being equally competent to legislate on the subject of prohibition and both deriving their powers from the same Act of parliament which had not in express terms conferred on one the power of repealing the Act passed by the other. That question was answered in the negative. An argument was advanced that S.129, British North America Act, had given in express terms the Dominion Parliament the power to repeal the provincial Temperance Act

of 1864. That contention was overruled and in connexion with that contention Lord Watson made the following observations at the bottom of P. 366 of the report.

It appears that neither the Parliament of Canada nor the Provincial Legislatures have authority to repeal statutes which they could not directly enact and then referred to (1882) 7 A.C. 136. These last-mentioned observations in my judgment were made on the matter of construction of S.129 of the Canadian Constitution and did not lay down a general proposition of law. Section 129 provided that all laws in force in the Provinces of Canada (which consisted of the Province of Ontario and Quebec, Nova Scotia and New Brunswick at the date of the Union) shall continue in force till repealed, abolished or altered by the Parliament of Canada (the dominion Parliament) or by the Legislature of the respective province, according to the authority of the Parliament or of that Legislature under this Act.

All that Lord Watson said in this part of the judgment was that according to the true construction of S.129 the Dominion Parliament could not repeal or amend the Temperance Act of 1864, which, being an Act passed before the Union, was continued by S.129 in the province of Ontario, as the Dominion parliament could not have passed that Act for the Province of Ontario only after the Union by reason of the provisions of S.92 of the Constitution Act of Canada.

The case before us is in essential features of the same type. Both the Central Indian Legislature and the Governor-General exercising his function under S.72 of Sch. 9 derive their powers to Legislate from the same Act of parliament. Both are competent to legislate on items of Lists I and III, bearing upon peace and good Government of British India. I am leaving out for the present list II subjects, for a question has been raised as to whether the Governor-General can by Ordinance made and promulgated under S.72 encroach on any subject of list II. The Act of Parliament does not give express powers to the Governor-General to directly repeal, reamend an Act of the Central Indian Legislature. The observations of Lord Watson, which I have first quoted, would therefore apply with equal force to the case before us. I therefore hold that the Governor-General has no power to repeal directly and in express terms any Act of the Central Indian Legislature. The power to amend stands on the same principle, for whereas repeal means the destruction of the whole, amendment means the destruction of a part, followed, may be but not necessarily, by the creation of a substitute. I accordingly hold that S.2 of Ordinance 14 of 1943 is ultra vires the powers of the Governor-General. Apart from the reasons stated above the Government of India Act gives indications that such a power was not intended by Parliament for the Governor-General in cases where either the Governor-General or the Governor is given the power to make what in substance are laws—either by Ordinance or by Regulation, and they stand on the same footing under the Indian Constitution Act—Parliament had expressed itself in clear terms; where it intended that they (the Governor-General or the Governor, as the case may be) should have the power to repeal or amend an Act of the Legislature. A reference to Ss. 92 (2) and 96 read with S.95 (3), Government of India Act, supports the view I am taking. The last portion of S.72 of sch. 9 also indicates that where Parliament intended to confer such a power to a co-ordinate legislative body, e.g. the Indian Legislature, it expressed itself in an unambiguous manner.

[(Omitted: Justice R.C. Mitter's observations on the following references and points made by the petitioners:

1. Reference to Madras High Court judgment of 5 May 1943 on Govind Swaminathan V. Emperor.

2. Only the Central Indian Legislature has power to amend an Act passed by it in pursuance of S.102.
3. Governor-General has no power to legislate by Ordinance on matters listed in List II overruled.
4. Governor-General has no power to give retrospective operation to his Ordinance — overruled.
5. The Ordinance cannot affect pending proceedings decision against the petitioners) — Ed.]

(8) Section 3 of the Ordinance has no existence apart from S.2.

The argument of the learned Advocate-General is that even if the amendment of S.2. (2), cl. (x) Defence of India Act, by S.2 of the Ordinance is bad, S.3 of the Ordinance stands and the orders of the detention on the persons before us cannot be challenged. I cannot accept this contention. I have already held that the Governor-General cannot repeal or amend an Act of the Central Indian Legislature. An Act is amended if some of its provisions are altered. It is also amended if some provisions are added to its original provisions. I consider both Ss.2 and 3 of the Ordinance to be amendments of the Defence of India Act. The preamble to the Ordinance throws light on the matter and supports my view). That is one reason why I hold that S.3 is bad, for I have already held that the Governor-General by his Ordinance made and promulgated under S.72 of Sch. 9 cannot amend an Act of the Indian Legislature. There is another reason why I hold that S. 3 of the Ordinance falls to the ground with S.2. Section 3 says that for the removal of doubts the provisions contained therein were enacted. The 'doubt' in my judgment would have arisen in the following manner, if S.3 had not been enacted. By S.2, cl. (x) of S.2 (2), defence of India Act, was amended with retrospective effect. That amendment would sustain R. 26, Defence of India Rules, from 29th September 1939, when the Defence of India Act was passed, but it could still be argued that the orders of detention made before 28th April 1943, when the Ordinance was promulgated were bad. To set at rest that point, S.3 was enacted. I do not wish to develop this point further, as it is dealt with fully in the judgment of my learned brother Sen J. which I had the advantage of seeing. I agree with the reasons given therein for coming to the conclusion that S.3 of the Ordinance cannot have an existence independently of S.2. I accordingly answer this ground in favour of the petitioners.

(9) Rule 26 of the Defence of India Rules had no existence when the Defence of India Act (35 of 1939) was passed

Assuming S.3 of Ordinance 14 of 1943 to be a good enactment the petitioners can challenge R. 26 of the Defence of India Rules on any ground other than the ground mentioned therein. That position is clear on the terms of S.3 of the Ordinance, and is moreover not contested by the learned Advocate-General. The petitioners' advocates attack Rule 26 on the ground that it never had existence in the eye of law. For following this argument the following facts are relevant. On 3rd September 1939 Ordinance 5 of 1939 was made and promulgated by the Governor-General under S.72 of Sch. 9. Rule 26 of the Defence of India Rules was published on the same date. Ordinance 5 of 1939 was repealed by the Defence of India Act (35 of 1939) which was passed on 29th September 1939. Section 2 of the Act is a reproduction of S.2 of that Ordinance. The substance of that rule as published on 3rd September 1939 so far as it is material for the argument on this point is as follows. Paragraph I gave the Central

Government only the power to make, if satisfied, any of the orders mentioned in cls (a) to (g) of that paragraph on any person with a view to prevent him from acting in a manner prejudicial to the efficient prosecution of the war, to the defence of British India or to public order. Clause (b) provided for detention. Paragraph 2 gave the Provincial Government powers to make like orders on a person who was within province with a view to prevent him from acting in a manner prejudicial to public order only.

After the Defence of India Act had come into force that rule was amended twice once on 28th March 1940 by Notification No. 356 O.R./40 and then again on 3rd August 1940 by Notification No. 534 O.R./40. The rule as it exists now with the exception of the words 'His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas' after the words 'public order' in para. I was the result of the first mentioned amendment and those words were added by the second amendment, section 21, Defence of India Act, on which the argument is based is as follows:

The Defence of India Ordinance, 1939, is hereby repealed, and any rules made . . . in exercise of any power conferred or under the said Ordinance shall be deemed to have been made . . . in exercise of the powers conferred by or under the Act as if this Act had commenced on 3rd day of September 1939.

The learned advocates for the petitioners contend that on the reason given by the Federal Court in *Talpade's case* it must be held that R. 26 as made and published on 3rd September 1939 was also *ultra vires*, because it went beyond what had been provided for in S.2 (2), cl. (x) of Ordinance 5 of 1939. It was made, they say, not in the exercise of the powers conferred by Ordinance 5 of 1939, but in excess of those powers. It had, therefore, no existence in the eye of law on 29th September 1939, when the Defence of India Act 1939, was passed, and therefore could not be continued thereafter by the force of S.21, Defence of India Act. To emphasize this argument reference was made to S.24, General Clauses Act (10 of 1897) and our attention was drawn to the difference in the language employed there. It was pointed out that the language of S.24, General Clauses Act, is not 'made in exercise of powers' under the repealed Act or Regulation etc., but simply made or issued under the repealed Act or Regulation. The argument does not however appear to me to be convincing. I do not see any substantial difference in these two phrases. In my judgment, S.21 does not merely continue the rules made in pursuance of the powers given by the Defence of India Ordinance but continues them by re-enactment. What in fact had existed was continued not merely what existed only as valid in law. Rule 26 as it then existed may have been *ultra vires*, but no Court had then pronounced it to be so. Moreover, a finding by a Court that a particular rule or bye-law is *ultra vires* does not remove it from the statute book, for Courts can only declare a rule or bye-law to be void in order to give the substantive relief asked for. It cannot say that it never existed. The observation of Dicey at p. 98 of *Law of the Constitution* (Edn. 9) lead to the inference which supports the view I am taking. Rule 26 as it existed before 29th September 1939 was accordingly a rule made in exercise of the powers under the Defence of India Act, as in fact it was made in the exercise of the powers given by ordinance 5. As it had existed at the passing of the Defence of India Act it continued and could later on be amended from time to time.

(10) Detention of the nine persons improper

The argument on this point has been addressed to us under two heads: (1) that the authority or the person who is authorized to detain under rule 26, Defence of India Rules, had not in

fact been satisfied that the detention of the nine persons before us was necessary: and (II) that the power of detention had not been exercised in the case of those persons in a *bona fide* manner. In support of the proposition that Courts can investigate these matters, two cases have been cited before us by the petitioners' advocates, viz. 1931 A.C. 662 and 60 Cal. 364. In the first mentioned case, the legality of the expulsion of the Eleko by the executive authority of Nigeria under powers conferred by an Ordinance was challenged. It was held that the Court was entitled to investigate as to whether the conditions on which the executive act of expulsion depended for its validity had been complied with or not. In the cases before us, the act of detention of nine persons in an executive act, which depends upon the condition that the authority designated by R. 26 is to be satisfied that the detention of the particular person was necessary for preventing him from doing acts of a prejudicial nature. The Courts cannot enquire into the grounds of satisfaction or the sufficiency thereof but have certainly the jurisdiction to enquire as to whether that authority or person was satisfied as a matter of fact before he made the order of detention. In the second case, the phrase 'illegally or improperly detained' occurring in S.491, Criminal P.C. was construed. It was held that the word 'Improperly' can only refer to cases in which, although the forms of law had been observed, there had been a fraud on an Act or an abuse of the powers given by the Legislature'. In 1942 A.C. 206, the principle that a Court can look into the question as to whether the power of detention had been exercised in a *bona fide* manner by the executive in exercise of powers given to it by the Legislature was re-affirmed, and it was stated if the Court was satisfied that it had not been so exercised, it must give relief. These principles are, in my judgment, well established.

In all the cases before us, the orders of detention have been made in the following form:

'Whereas the person known as (name given) is detained in the . . . jail under the provisions of R. 129, Defence of India Rules,

And whereas the Governor has been satisfied that with a view to preventing the said person from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order or the efficient prosecution of the war, it is necessary to make the following orders to continue his detention:

Now therefore in exercise of the powers conferred by cl. (b) of sub-rule (1) and sub-rule (5) of R. 26, Defence of India Rules, the Governor is pleased to direct (a) that the said person shall until further orders be detained (b) that until further orders the said person be detained in . . . jail and (c) that during such detention the said person shall be subject to the conditions laid down in the Bengal Security prisoners Rules, 1940.

By the order of the Governor.

Signed by Assistant, Deputy or Additional Secretary (as the case may be) to the Government of Bengal.'

These orders have been authenticated in accordance with the rules framed under S.59 (2), Government of India Act. The learned Advocate-General concedes that if the orders of detention had not been so authenticated it would have been open to Courts to investigate the question as to whether the Governor was satisfied in fact on the general principle laid down in 1931 A.C. 662, but in the cases before us we must take the orders of detention as they stand in view of S.59 (2), Government of India Act, that is to say, he says that we are pretended from saying that the Governor was not satisfied as to the necessity of detaining these persons, for in the order the Governor says that he was satisfied. In my judgment, this is not the effect of S.59 (2). That section prevents an order of the Governor duly authenticated from being

challenged on the one ground specified in that sub-section. No one can say that the order is not the order of the Governor and that is all the effect of these sub-section, but he can certainly say that the Governor was not in fact satisfied. The affidavit of Dr Nalinaksha Sanyal contains materials relevant to the enquiry as to whether the authority required by Rule 26 was in fact satisfied before the orders of detention were made under R. 26. It embodies the answers given by the Home Minister on the floor of the Legislative Assembly. Proceedings in Council ought to be proved by the journals of the House, but the learned Advocate-General has waived the mode of proof. He says however that the answers given by the Home Minister are not admissible in evidence, and in support of his contention has referred us to the decision of the Judicial Committee of the Privy Council in A.I.R. 1935 P.C. 34. In that case, to the plaintiff's claim for damages for defamation, the defendant pleaded justification, and in support of that plea proved some reports of the Legislative Assembly which contained a speech delivered by the plaintiff when he was the Leader of the Opposition. Lord Thankerton in dealing with the point observed:

As regards the reports of debates, it is clear in their Lordships' opinion that they can only be evidence of what was stated by the speakers in the Legislative Assembly, and are not evidence of any fact contained in the speeches.

I do not see in what way that case supports the contention of the learned Advocate-General that the answers given by the Home Minister are inadmissible. Those answers were given in reply to written and supplementary questions and were given by the Home Minister on behalf of the Government. The answers relate to facts and not to opinion, and those facts directly relate to the question as to whether any person or the authority designated by R.26 was at all satisfied before making the orders of detention under R. 26. The Crown does not say that the answers of the Home Minister have not been correctly set out in the annexure to Dr Nalinaksha's affidavit. My learned brother Sen J. has dealt with the affidavit of Dr Nalinaksha Sanyal and of Mr Porter in detail. For the reasons given by him, I agree with his conclusions. But for the purpose of considering the questions of law that have been raised by the learned Advocate-General on the basis of S.49 and S.59 (3), Government of India Act, I will assume that in five cases the Home Minister, and in three cases Mr Porter, who was then the Additional Secretary in the Home Department of the Government of Bengal, were satisfied as to the necessity of detaining the persons under R. 26. Mr Porter's affidavit, taken with the answers of the Home Minister as set out in Dr Nalinaksha's affidavit, may suggest that the case of Sasanka Sekhar Sanyal was the only case that was considered by the Governor himself.

It is admitted by the learned Advocate-General that, except for the area covered by the District Chittagong, the Provincial Government has not delegated its powers and duties by orders made under sub-section. (5) of S.2, Defence of India Act, to any authority or person. The learned Advocate-General further admits that none of the cases which we have before us relate to the Chittagong area. The position taken up by him for raising the points of law is that the orders of detention must be taken to be orders made by the Provincial Government itself, though none of the cases (except one) had been brought up or considered by the Governor himself. He says that if either the Home Minister or the Secretary or the Additional Secretary in the Home Department of the Government of Bengal was satisfied as to the necessity of detaining these persons and passed orders for detention, that was sufficient, as it must be taken, by reason of the provision of S.49 and also by reason of the General rules of business framed under S.59 (3) Government of India Act, that the Provincial Government

after being satisfied had made the orders for detention, for the reason that the Provincial Government functions through Ministers and Secretaries. On a careful consideration of the matter, I cannot accept his contentions.

Rule 26, Defence of India Rules, requires the Provincial Government to make the order for detention on it being satisfied that the detention of a particular person is necessary. That power and the duty can be delegated by the provincial Government to any other authority or officer not subordinate to Central Government by making an order under S.2 (5), Defence of India Act. The word, provincial Government has been defined in S.2, cl. 43, (a), General Clauses Act (10 of 1897). It means the Governor acting or not acting in his discretion, or exercising or not exercising his individual judgment, according to the provisions made in the Government of India Act, 1935. The matter of detention in terms of Rule 26, Defence of India Rules, comes within the special responsibility of the Governor as mentioned in S.52 (1), cl. (a), Government of India Act. The Governor is, therefore, required to exercise his individual judgment. The Ministers can tender their advice to him but he is not bound to accept their advice. In this view of the matter, the Governor must act himself, unless he had delegated his power and duty to another by an order made under S.2 (5), Defence of India Act. In these circumstances, and in the absence of delegation by an order passed by him under the last mentioned section, I do not see how S.49, Government of India Act, or the General rules of business made under S.59 (3), Government of India Act, could be invoked to sustain an order under R. 26 made either by the Home Minister or a Secretary or Additional Secretary to the Government of Bengal, when the Governor himself was not satisfied, but either the Home Minister or the Secretary or the Additional Secretary was, and they made the orders in the name of the Governor. In any view, a Minister cannot be regarded as an officer subordinate to the Governor: I.L.R. (1939) 2 Cal. 411. Moreover, section 49 says that the executive authority of a province shall be exercised on His Majesty's behalf by the Governor either directly or through officers subordinate to him, but sub-section (2) of S.49 limits the exercise 3 (2) on the Governor to matters which could be dealt by the provincial Legislature only in the absence of any other provision in the Government of India Act, and so far as this matter is concerned, there is no other provision. The Defence of India Act could not have been enacted by the provincial Legislature because, as I have held already, that enactment deals exclusively with matters falling within List I.

By the General rules of business, the subject of 'public order', has been assigned to the Home Department of the Bengal Government which is in charge of the Home Minister. The General rules of business framed under S.59 (3), Government of India Act, authorize the Ministers to regulate the business of their Departments by standing orders. Such standing orders may provide that in cases of extreme urgency the Secretary can make orders without reference to the Minister concerned, but all such cases will have to be brought to the notice of the Minister at the earliest opportunity. The Home Minister had issued a General standing order in terms of this General rule. But standing orders cannot, in my judgment, authorize the Secretary, even in cases of emergency, to deal himself with a case of detention under R.26. The matter being within the special responsibility of the Governor, the Governor alone (in the absence of an order made under S.2 (5), Defence of India Act) has to make an order after he is satisfied about the necessity of the detention of that particular person. The Home Minister cannot pass such an order on his satisfaction. If the Governor does not wish to do so for any reason, he will have to act in accordance with S. 2 (5), Defence of India Act. The Secretary the Additional Secretary cannot also deal with the matter of detention under R.26

on his own satisfaction as to the necessity of detention in the absence of an order by the Provincial Government (which means the Governor) made in terms of that sub-section. So the standing order of the Home Minister which authorizes the Secretary to pass orders in urgent cases without reference to him cannot be of any avail, for, that standing order governs only such orders which the Minister could himself have made. The above reasons equally apply to the cases where the Additional Secretary, Mr Porter, made orders for detention on his own satisfaction on Bejoy Singh Nahar, Shibnath Banerjee and Nanigopal Mozumdar, for the standing order of the Minister quoted in para 8 of Mr Porter's affidavit could not in law confer a power on the Secretary which the Minister himself did not possess. For the reasons given under this heading, I also hold that the nine persons before us have been illegally detained. For the reasons I have given in discussing the matter under headings Nos (3), (8), and (10), I hold that the detention of all the petitioners before us is illegal and my order is that all of them be forthwith set free.

Khundkar J. — I have had the advantage of reading the judgment just delivered by my learned brother Mitter J., and I agree that the following points enumerated in his judgment should be negatived. (1) That the whole of S.2, Defence of India Act, both in its original and amended forms, is ultra vires of the Indian Legislature. (2) That the portion of cl. (X) of S.2 (2) of the said Act, which has been added by the amendment made by the Ordinance is ultra vires of the Indian Legislature. The corresponding portions of R. 26, Defence of India Rules are bad and consequently the orders of detention in the cases we have before us are bad. (4) That it is only the Central Indian Legislature that has the power to repeal or amend an Act of the Central Indian Legislature passed under the Provisions of S.102, Government of India Act. (5) That the Governor-General has no power to legislate by such an Ordinance on any subject enumerated in List II of Sch. 7, Government of India Act, 1935. (6) That in any event the Governor-General has no power to give retrospective operation to such an Ordinance. (7) That, in any event, Ordinance 14 of 1943 cannot affect proceedings which were pending on the date of its promulgation. (9) That R. 26, Defence of India Rules, had no existence in the eye of the law on 29th September 1939 and so does not exist even now either in its original or amended form.

I agree with the conclusions reached by my learned brother upon these points, and with the reason upon which those conclusions are based. It is therefore not necessary for me to add anything to what is contained in his judgment regarding these points. As I am constrained to disagree regarding the remaining points dealt with in the judgment just delivered, I give below my reasons for so doing.

[(Omitted: Rest of Khundkar's discourse) — Ed.]

Sen J. — I agree with my learned brother Mitter J. that these rules should be made absolute and the petitioners set at liberty forthwith. The points raised have been very fully discussed by my learned brothers and I concur in the conclusions of my learned brother Mitter J. on all points except one with which I shall deal later. The questions involved are of such importance that even at the risk of repeating what has already been said I feel that I should record separately my conclusions and the reasons therefore regarding some of the important matters canvassed before us. Before stating the arguments of the parties it will be necessary to go into the history of the rule under which the petitioners have been detained. The rule is R.26 made by the Central Government in the purported exercise of powers presumed to have been granted to it by the Defence of India Act of 1939. Before the Defence

of India Act of 1939 was enacted there existed the Defence of India Ordinance V of 1939. Certain rule making powers were given to Central Government by the Ordinance. The Central Government made a rule, being R. 26 in the exercise of powers presumed to have been given to it by the Ordinance. That rule may for the purposes of these cases be said to be in the same terms as the present one. The Ordinance was repealed and re-enacted by the Defence of India Act, 1939, which is materially in the same terms as the Ordinance, and R. 26 was sought to be continued in force by S.21 of the Act which is in these terms.

The Defence of India Ordinance 1939, is hereby repealed, and any rules made, anything done and any action taken in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made, done or taken in exercise of powers conferred by or under this Act as if Act has commenced on the 3rd day of September 1939.

The rule underwent a slight modification which is not material and it now stands thus:

26. (1) The Central Government or the provincial Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian states, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war it is necessary so to do, may make an order. (a) . . . (b) directing that he be detained.

The petitioners have been detained under this rule. After their detention the validity of the rule was in question in the Bombay High Court in Keshav Talpade's case. That Court held that it was valid. On appeal the Federal Court has held that the rule was made in the exercise of powers presumed to have been granted to the Central Government by S.2 (2) (x), Defence of India Act, and that it is ultra vires of that section as the section did not grant the Central Government the power or authority to make such a rule. Thereafter these petitioners applied before me under S.491, Criminal P.C., for their release on the ground that their detention was not sanctioned by law. I issued rules upon the provincial Government to show cause why the petitioners should not be released. After the rules had been issued and pending the decision thereon the Governor-General passed an Ordinance being ordinance 14 of 1943. This Ordinance consists of only three sections. By S.2 S.2 (2) (x), Defence of India Act is repealed and a new S.2 (2) (x) is substituted in its place. The new section purports to give wider rule-making powers to the Central Government, and it is given retrospective operation. By this method R.26 is sought to be validated. This is the intended effect of S.2 of the ordinance. Then, there is the other section viz., S.3 which enacts that no detention heretofore made under R.26,

Shall be deemed to be invalid or be called in question on the ground merely that the said rule purported to confer powers in excess of the powers that might at the time the said rule was made be lawfully conferred by a rule made or deemed to have been made under S.2, Defence of India Act.

There is no room for any controversy that, if the present Ordinance 14 of 1943 have not been promulgated in view of the decision of the Federal Court, the detention of the petitioners must be held to be illegal. The question for decision is whether this ordinance has the effect of validating the detention. The arguments urged on behalf of the petitioners may be conveniently grouped under four heads thus: (1) the present Ordinance is ultra vires the power of the Governor-General and it cannot validate the detention. (2) Even if the Ordinance be valid it cannot have the effect of validating Rule 26 as the rule had no legal existence when the Defence of India Act was enacted. (3) Even if the Ordinance be valid, inasmuch as it was promulgated when the present proceedings were pending, the cases of the petitioners must be

decided as if the Ordinance had not been passed. (4) Even if the Ordinance has validated Rule 26 the orders of detention are bad as they have not been made in accordance with the provisions of the rule. I shall now take up for consideration the main argument under the first head.

It may be stated thus. The present Ordinance has been promulgated by the Governor-General in the exercise of the powers conferred upon him by S.72 of Sch.9, Government of India Act of 1935. The Ordinance directly repeals S.2 (x), Defence of India Act, an Act of the Indian Legislature, and substitutes in that Act a new S.2 (2) (x) Although S.72 gives the Governor-General very wide powers it does not give him the power to repeal or amend directly an Act of the Indian Legislature. On behalf of the Crown the answer to this argument is that although such power has not been expressly conferred by the section nevertheless this power is necessarily included in the wide powers conferred by the section. Section 72 is in these terms:

The Governor-General may, in cases of emergency, make and promulgate Ordinances for the peace and good Government of British India or any part thereof, and any Ordinance so made shall for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature; but the power of making Ordinances under this section is subject to the like restrictions as the power of the Indian Legislature to make laws: and any Ordinance made under this section subject to the like disallowance as an Act passed by the Indian legislature, and may be controlled or superseded by any such Act.

It is clear that although the section expressly gives the Indian Legislature the power to control or supersede directly an Ordinance no such corresponding power is expressly given to the Governor-General in respect of an Act of the Indian Legislature. I would next draw attention to S.108, Government of India Act, which expressly recognizes the power in the Indian Legislature to amend or repeal directly an Ordinance. It provides that if the Indian Legislature wishes to pass an act which repeals, amends or is repugnant to an ordinance it must get the previous sanction of the Governor-General. There is no similar express recognition of any power in the Governor-General to repeal or amend directly by Ordinance an Act of the Indian Legislature. I would emphasise at that stage that the present point for consideration is not whether the Governor-General by an Ordinance can indirectly repeal or amend an Act of the Indian Legislature by the process of repugnant Legislation but whether the Governor-General as ordinance maker can as he has done by the present Ordinance, directly repeal a provision of an Act of the Indian Legislature and substitute therein as part of that Act another provision.

The argument of the learned Advocate-General is this; By S 72 of Sch. 9 once there is an emergency and the Governor-General considers that an Ordinance is necessary for peace and good Government, the Governor-General is given power to legislate by ordinance on any topic upon which the Indian Legislature could legislate and such Ordinance has the same force as an Act of the Indian Legislature. Where such wide and plenary powers are given it follows as a matter of course that the Governor-General has the power to amend or repeal an Act of the Indian Legislature. Such power is inherent and need not be expressly granted. It is there unless it is expressly taken away.

I am unable to accept this view. There is, I know a well-known general principle that a body which is given the power to make laws has necessarily the power to amend or repeal its own laws; see S.33, Interpretation Act, which related to bye-laws. I am also able to appreciate an argument that where two bodies are given the same power to legislate in the same field, one body may make laws which are repugnant to the laws made by the other body and

thereby indirectly repeal or amend an Act of the other. But it must be remembered that when such repugnancy occurs, the Courts and the Courts alone decide which law is to prevail. One Legislature does not repeal or amend directly the Act of the other. I am not aware of any general principle that where there are two legislative bodies with equal powers to legislate in the same field one body has the inherent power to repeal or amend directly the law of the other body and thereby establish by its own Act an overriding power over the other legislative body. There is a fundamental difference between the power to amend or repeal directly and the power to make repugnant laws. In the case of repugnancy one Legislature does not override the other. It merely Legislates in its own field and leaves it to the Court to decide which law shall prevail. When one Legislature has the right to amend or repeal directly an Act of the other the decision as to which law shall prevail is not left to the Court. The Legislature which repeals or amends makes the decision for itself. The matter may be looked at from another angle. An act of the Indian Legislature expresses the collective wisdom and will of the members of the Legislature, an Ordinance expresses the will and wisdom of the Governor-General.

It is difficult to appreciate how there can be any inherent power in the Governor-General as ordinance maker to introduce an Ordinance into an Act and make it part of the product of the Indian Legislature. To put the question more concisely. Has the Governor-General by reason of the provisions of S.72 the inherent power of transforming an Ordinance into an Act of the Legislature? In my opinion he has not. However similar they may be an Ordinance is one thing and an Act of the Indian Legislature is another. They are not identical. Section 72 gives the Governor-General the power to make ordinances. It does not empower him to make an Act of the Indian Legislature or to convert Ordinance into an Act of the Indian Legislature. If he cannot make such an Act, it follows that he can have no inherent power to repeal or amend it directly or substitute something into it.

The learned Advocate-General supported his contention that the Governor-General had power to amend or repeal directly an Act of the Indian Legislature by recourse to another argument. This is what he said. When there is an emergency the Governor-General has, by virtue of the provisions of S.72 of Sch. 9, power to make any law that the Indian Legislature could make for peace and good Government. There can be no doubt that the Indian Legislature can make a law repealing or amending directly a previous law of the said Legislature. Therefore the Governor-General can make an Ordinance directly repealing or amending an Act of the Indian Legislature. The argument is plausible, but if the words of S.72 are carefully analysed it will be found to be unsound. Section 72 does not anywhere either expressly or by necessary implication say that in cases of emergency the Governor-General can by Ordinance make every law which the Indian Legislature can make. It says that in cases of emergency the Governor-General can make an Ordinance on peace and good Government and that such Ordinance when validly made shall have 'the like force of law as an Act passed by the Indian Legislature'. What does this then mean? It means simply this, that the Ordinance shall be as binding upon persons as if it were an Act of the Indian Legislature and that it will be enforceable in the same manner as an Act of the Indian Legislature. The words 'shall have the like force of law as an Act passed by the Indian Legislature' describes the qualities of the Ordinance, they do not confer a power on the Governor-General to make every law which the Indian Legislature can make. Again the section says:

'The power of making Ordinance under this section is subject to the like restrictions as the power of the Indian Legislature to make laws; and any Ordinance made under this section is subject to the like disallowances as an Act of the Indian Legislature.

These words are relied upon by the learned Advocate-General for his contention that the Governor-General as Ordinance maker can do whatever the Indian Legislature can do. The words relied upon are not words donating powers but words imposing restrictions on the power already conferred by the first part of S.72 on the Governor-General to make Ordinances. The learned Advocate-General seemed to argue that as the section imposes the same restrictions upon the Governor-General's power of making Ordinances as are imposed on the powers of the Indian Legislature to make laws, it follows that the powers of both legislatures are identical. There is a fallacy in this argument and, if I may say so with respect, the argument really begs the question. If both Legislatures had originally identical powers then certainly, the imposition of identical restrictions would result in the powers still remaining the same. This is axiomatic, but the mere imposition of like restrictions does not connote the conferment of identical powers. We are thus brought back to the original question—does S.72 confer upon the Governor-General the power to do everything that the Indian Legislature can do? The answer is that the section does not say that it is doing any such things and there is neither jurisdiction nor necessity for reading into a section of this description, which confers extra-ordinary emergency powers upon the Governor-General, something which is not there and which will have the effect of widening these emergency powers.

The learned Advocate-General next argued that as the Governor-General could indirectly repeal or amend an Act of the Indian Legislature by making an Ordinance which was repugnant to the Act he necessarily could effect the same end by the direct method of express repeal and amendment. What can be done indirectly, he argued, can also be done directly. I know of the principle more than once laid down by the judicial Committee and the House of Lords that what a Legislature cannot do directly it cannot do indirectly (1921) 2 A.C. 91, at p. 100, but I have not yet found any Court laying down the principle that what one can do indirectly one can necessarily do directly. To give countenance to this argument of the learned Advocate-General would be to accept the view that the end justifies the means, a view that is as unsound in ethics as it is in law. The law may sanction the achievement of a certain end but it does not follow from this that the law sanctions the employment of any and every means for the achievement of that end. What means are permissible and what are not must be ascertained from the terms of the law which gives the power and when there are no express terms from general principles of construction.

On behalf of the petitioners it was pointed out that whenever Parliament intended to give one Legislative body in India the power to repeal or amend an Act of another Legislative body Parliament gave this power in express terms. In this connection our attention was drawn to S.72 itself which lays it down in express terms that the Indian Legislature can control or supersede an Ordinance. It was argued that if the proposition of the Advocate-General was correct, viz., that when two Legislatures are empowered to pass laws in the same field it necessarily follows that one Legislature can repeal or amend directly the Act of the other, then there was no necessity for providing expressly that the Indian Legislature could control or supersede an Ordinance. The reply of the learned Advocate-General was that the express provision was not necessary and was put in there 'ex abundant cautela'. Why this abundant caution was necessary regarding the powers of the Indian Legislature which is the normal Legislative authority and not regarding the powers of the Governor-General acting as a Legislature only in cases of emergency is difficult to appreciate. I should have thought that words of abundant caution were more necessary when defining the emergency legislative powers of an authority

who normally would not have such powers than when defining the legislative powers of the normal Legislature.

On the other hand, it is open to the petitioners to rely upon the legal maxim *Expressio unius excludio alterius* and say that when one only of two legislative authorities is expressly given the power to repeal and amend an Act of the other it follows that the latter authority had no such power. On behalf of the petitioners our attention was also drawn to the provision of Ss. 92, 95 and 96, Government of India Act, in support of the contention that whenever Parliament intended to confer on one Legislative body the power to repeal or amend directly the Act of another express terms are to be found granting this power. Section 92 deals with excluded areas and S.95 deals with British Baluchistan. Neither the Indian nor the Provincial Legislature has the power to legislate with respect to these areas. These sections give power to the Governor-General to introduce by notification as law into these areas any enactment of the Indian or Provincial Legislature with such modifications as he thinks fit. He is also given the power to make regulations for the peace and good Government of these areas which shall have 'the same force and effect as an Act of the Indian Legislature'. After giving the Governor-General these wide powers of Legislation by regulation the section goes on to grant expressly to the Governor-General the power to repeal or amend by these regulations any law of the Indian or provincial Legislature introduced by notification. Section 96 deals with the Andaman and Nicobar Islands. In respect of these places the Indian Legislature has the power to make laws. Section 96 empowers the Governor General to make regulations for the peace and good Government of these areas which shall have 'the same force and effect as an Act of the Indian Legislature'. Here again an express power to amend and repeal an Act of Indian Legislature by means of regulations is given to the Governor-General. If the contention of the learned Advocate-General be correct, viz., that when two Legislatures have power to legislate in the same field one legislature has necessarily the power directly to repeal or amend the Act of the other then it was quite unnecessary for Parliament to make those express provision in Ss. 95, and 96, Government of India Act. Again, the learned Advocate-General argues that this was done for abundant caution. I am unable to appreciate why Parliament should be so cautious in all these instances and fail to exercise any caution when enacting S.72. It is more reasonable to presume from the provision of all these sections that whenever Parliament intended to give one Legislature the power to amend directly an Act of another it took meticulous care to say so in express terms. The view that I have taken finds support in the decision of the Judicial Committee in 1896 A.C. 348 I would refer to the observation of Lord Watson at P. 366 which is in these terms.

'It has been frequently recognised by this board and may now be regarded as settled law, that according to the scheme of the British North America Act the enactments of the Parliament of Canada, in so far as these are within its competency, must override provincial Legislation. But the Dominion Parliament has no authority conferred upon it by the Act to repeal directly any provincial statute, whether it does or does not come within the limits of jurisdiction prescribed by S. 92. The repeal of a provincial Act by the Parliament of Canada can only be effected by repugnancy between its provisions and the enactments of the Dominion, and if the existence of such repugnancy should become a matter of dispute, the controversy cannot be settled by the action whether of the Dominion or of the provincial Legislature, but must be submitted to the judicial tribunals of the country. In their Lordships opinion the express repeal of the old provincial Act of 1864 by the Canada Temperance Act of 1886 was not within the authority of the Parliament of Canada. It is true that the upper Canada Act of 1864

was continued in force within Ontario by S.129, British North America Act, 'until repealed, abolished, or altered by the Parliament of Canada or by the provincial Legislature' according to the authority of that Parliament, 'or of that legislature'. It appears to their Lordships that neither the Parliament of Canada nor the Provincial Legislature have authority to repeal statutes which they could not directly enact.'

The learned Advocate-General argued that the Judicial Committee, when they said that the Dominion Parliament authority conferred upon it by the Act to repeal directly any provincial statute whether it did or did not come within the limits of the jurisdiction prescribed by section 92, British North America Act, were not basing their view upon any General principle that one Legislature cannot repeal an Act of another unless it is expressly given such power, but were basing it upon the particular provisions of the British North America Act which, he said, prevented the Dominion Parliament from repealing an Act of the Provincial Legislature. I am unable to accept this view for the reasons stated by my learned brother Mitter J., with which I respectfully and entirely agree. The conclusion of the Privy Council regarding the inability of the Dominion Legislature to repeal directly an Act of the Provincial Legislature is based on the assumption that one Legislature cannot directly repeal an Act of another unless it is expressly vested with powers to do so and that the North America Act had not vested the Dominion Parliament with any such powers. The judgment contains nothing to indicate that their Lordships held the view that the Dominion Parliament would have had the inherent power to repeal directly an Act of the Provincial Legislature were it not for the peculiar provisions of the North America Act, nor was the learned Advocate-General able to point out anything in the North America Act which would have the effect of taking away any such inherent power if it existed. Sections 91 and 92, North America Act, are the Provisions which describe the fields of legislation of the Dominion and Provincial Legislatures respectively. It would seem *prima facie* that each Legislature has an exclusive field of legislation but that is not so. There is some overlapping and in times of great emergency the Dominion Parliament for the safety of the Dominion as a whole has power to trench upon certain subjects in the provincial field (1923 A.C. 695 at p. 703). In spite of this power in the Dominion Parliament it was held in 1896 A.C. 348 p. 336, that the Dominion Parliament could not directly repeal an Act of the Provincial Legislature. Their Lordships went further and said that even if the Provincial Legislature had travelled beyond the provincial field the Dominion Legislature could not directly repeal it. But could only pass repugnant legislation and leave it to the Courts to decide which legislation should prevail. In my opinion, a general principle was being laid down in the above case to the effect that one Legislature cannot directly repeal an Act of another unless it is expressly given power to do so.

For the reasons given above, I am of opinion that there is no power in the Governor-General to repeal or amend directly an Act of the Indian Legislature by means of an Ordinance passed under S.72 of Sch. 9, Government of India Act. The learned Advocate-General next argued that even if this be so S.2 only of the Ordinance would be *ultra vires*. Section 3 he said, did not directly amend any Act of the legislature and was therefore valid. That being so, he contended, the orders of detention made in respect of the petitioners could not be challenged. In my opinion, this contention cannot prevail for more than one reason. It is perfectly clear from the terms of S.3 itself that the section was intended to be merely an appendage to S.2. It was not intended to have any separate existence at all but was merely explanatory of the effect of S.2 on the validity of the detentions made before the promulgation of the Ordinance. If S.2 falls S.3 must fall with it. Let us remove S.2 from the Ordinance and see how it reads:

An Ordinance further to amend the Defence of India Act, 1939.

Whereas an emergency has arisen which makes it necessary further to amend the Defence of India Act, 1939 (35 of 1939), for the purpose hereinafter appearing.

Now, therefore, in exercise of the powers conferred by S.72 Government of India Act, as set out in Sch. 9 to the Government of India Act, 1935 (26 Geo V c.2), the Governor-General is pleased to make and promulgate the following Ordinance.

1. Short title and commencement (1) This Ordinance may be called the Defence of India (Amendment) Ordinance, 1943. (2) It shall come into force at once.

3. Validity of orders made under R. 26, Defence of India Rules — For the removal of doubts, it is hereby enacted that no order heretofore made against any person under R. 26 of the Defence of India Rules shall be deemed to be invalid or shall be called in question on the ground merely that the said rule purported to confer power in excess of the powers that might at the time the said rule was made be lawfully conferred by a rule or deemed to have been under S.2, Defence of India Act, 1939.

Section 3 by itself would have no meaning. I refer specially to the words 'For the removal of doubts.' Section 3 expressly states that it is enacted for the purpose of removal of doubts. Now what are that doubts it seeks to remove? Surely it cannot be said that the decision for the Federal Court created any doubt regarding the validity of the orders of detention made R. 26. The Federal Court in Talpade's case in explicit terms removed any possible doubts on the matter and declared that all such detentions were illegal. To say, in spite of this judgment of the Federal Court, that doubts still existed would be a piece of sheer impertinence and I am unwilling to ascribe such impertinence to anybody exercising legislative functions. Some other meaning must therefore be given to the words 'for the removal of doubts'. The meaning is obvious. The Federal Court had declared in Talpade's case that the detention of Talpade under R. 26 was illegal because that rule was ultra vires of the rule-making power granted to the Central Government by S.2, (2) (X), Defence of India Act, 1939. Section 2 of the Ordinance repealed S.2 (2) (x) and substituted a new section in its place in order to give the Central Government the powers to make a rule like R.26 stating at the same time that the new section shall be deemed always to have been substituted. To remove any doubts as to whether this new section would have the effect of validating detentions made before the amendment was made, S.3 was enacted. It does not make any new law. It states in express terms that its object is to remove doubts. In other words it is merely explanatory of S.2. If S.2 falls S.3 which is merely pendant from S.2 must necessarily fall.

There is yet another reason why S.3 cannot prevent the petitioners from challenging the validity of their detention and it is this. As I have said before, Rule 26 was made originally under the Defence of India Ordinance 5 of 1939, in the exercise of powers assumed to have been granted to the Central Government by S.2, Defence of India Ordinance. The Ordinance was repealed by the Defence of India Act, 1939, and was re-enacted in almost the same terms. Section 2 of the repealed Ordinance was reproduced verbatim in the Act. No rules were framed under the Act but the rules made in exercise of power conferred by the Ordinance were saved by S.21 of the Defence of India Act. Now S.3 of the present Ordinance says that the validity of a detention heretofore made under R. 26 shall not be questioned on the ground that R.26 conferred more powers than could lawfully be conferred by a rule made or deemed to have been made under S.2, Defence of India Act. This is the only ground which a detainee is prohibited from urging by S.3. The urging of any other grounds against the validity of the detention is not prohibited. It is therefore open to the petitioners to urge as they do urge, that

their detention is bad not merely because R.26 conferred more powers than a rule made or deemed to have been made under S.2, Defence of India Act, could have conferred, but on the ground that Rules 26 had no existence at all as it was not saved by S.21, Defence of India Act. This leads us to the consideration of S.21. Does S.21 save and continue rules made under the Defence of India Ordinance, 5 of 1939, or does it enact those rules afresh? The learned Advocate-General contends that it is not a saving section. I am not able to accept this view. The marginal note of the section is 'Repeal and saving'. I fully appreciate that a marginal note cannot control a section but it certainly elucidates and illumines the meaning of section. There are no words in the section which indicate that the marginal note is a misdescription. I hold therefore that S.21 saves and continues rules made in the exercise of powers conferred by the Defence of India Ordinance 5 of 1939. Now what rules does the section save? The learned Advocate-General contends that all valid or invalid rules which purport to be made under the Defence of India Ordinance were saved. I am not able to accept this view for the reason that the section does not say so. It says.

And any rules made . . . in exercise of any power conferred by or under the said Ordinance shall be deemed to have been made . . . in exercise of powers conferred by or under this Act as if this Act had commenced on 3rd day of September 1939.

The section says that it saves rules made in the exercise of 'any power conferred'. It does not say that it saves rules made in the exercise of a power not conferred but believed to have been conferred. Now, if it can be shown that no power was conferred upon the Central Government by ordinance 5 of 1939 to make such a rule as R.26 then it follows that the rule was not saved by S.21. This takes us to the decision of the Federal Court in Talpade's case. I agree with the learned Advocate General that the decision of a Court cannot repeal or annul a statute (Dicey, Law of the Constitution, Edn. 9, p. 98). I am not suggesting that the decision of the Federal Court has annulled or repealed R.26 and it is not necessary to say any such thing. But there is no bar to this Court deciding with reference to the Federal Courts' judgment whether such a rule like R.26 could validly be made under the provisions of ordinance 5 of 1939. Having regard to what was said by the Federal Court in Talpade's case, and having regard to the fact that the rule making powers granted to the Central Government by Ordinance 5 of 1939 are exactly the same as the rule making powers granted by the Defence of India Act, this Court cannot but come to the conclusion that the Central Government had no power to make a rule like R. 26 under Ordinance 5 of 1939. The rule was not made in the exercise of 'any power conferred.' It was therefore not saved by S.21, Defence of India Act. That being so, a detention purporting to be made under R. 26 which ceased to exist with the repeal of the Defence of India Ordinance 5 of 1939 cannot be valid. Other grounds were urged to show that the Ordinance was ultra vires. They have been dealt with fully by my learned brother Mitter J. and I entirely agree with his conclusions regarding them and for the reasons given by him.

I now come to the second argument, viz., even if the Ordinance be ultra vires and it cannot have effect of validating R.26 as that rule had no legal existence when the Defence of India Act was enacted. This question has been fully discussed when dealing with the effect of S.3 of the Ordinance. I have held that R.26 ceased to exist with the repeal of the Defence of India Ordinance 5 of 1939 and that it was not revived by S.21, Defence of India Act. The present Ordinance makes no rules but merely seeks to enlarge the rule-making powers of the Central Government in order to validate R.26. Even if it be held that the Ordinance has

validly enlarged those powers, Rule 26 could not be validated as it was not in existence from long before the passing of the Ordinance. As there was no R.26, the detention of the petitioners must be illegal as there is no power given to any one by law to make any such order of detention. I shall sum up my conclusion on these two arguments urged on behalf of the petitioners. I hold in agreement with my learned brother Mitter J. that the entire Ordinance *ultra vires* and the Ordinance making powers of the Governor-General and that the orders of detention of the petitioners are bad and without jurisdiction. I hold further in agreement with my learned brother Mitter J. that S.3. of the Ordinance cannot prevent the petitioners from challenging the validity of the orders of detention or prevent this Court from declaring that such orders are illegal and without jurisdiction. In arriving at this conclusion regarding the effect of S.3. I have given an additional reason with which my learned brother Mitter J. does not agree. I also hold that even if the Ordinance be within the powers of the Governor-General the detention still remains illegal as R.26 was not in existence when the detentions were made and was never re-enacted.

I now come to the third point urged, viz., that the Ordinance having been promulgated while it cannot affect the decision of these cases which must be decided in accordance with the law as it was when the rules were issued. It is a well established principle that an amendment shall not be given retrospective effect unless there are clear terms in the Act making it retrospective. Here there are express terms giving the Ordinance retrospective effect but the petitioners contend that there is another principle, viz., even if an amendment is given retrospective effect, if there is an action pending at the time the amendment was made the Court will decide the action in accordance with the law as it stood before the amendment unless the Act clearly indicates that the amendment will affect pending proceedings. In this connexion our attention was drawn amongst others to (1876) 1 Ch. D. 48 at p. 50 and to (1940) 2 F.C.R. 110 at pp. 163 & 166. The learned Advocate-General relied on the decision of the Privy Council in 15 pat. 268. The principle which I deduce from all these cases is this. If the law is changed while an action is pending even if the new law is given retrospective effect it will not affect the rights of the parties to the pending action unless the statute expresses such an intention either directly or by necessary implication. In the absence of such an expression, the pending action must be decided according to the law as it was at the time the action commenced. I must guard myself by saying that these principles apply to change in the substantive law and not necessarily to a change in procedural law. It follows from this that the whole question is really a matter of construction of the particular statute. In my opinion Ss. 2 and 3 of the Ordinance read together leave no room for doubt that the intention of the Ordinance was to affect pending actions. The Ordinance if it had been valid would, in my opinion, have had to be taken into consideration in deciding upon the validity of these orders of detention. The third main ground therefore fails. In this connexion I may notice an argument urged on behalf of the petitioners that there is no power given to the Governor-General to make an Ordinance having retrospective effect. In support of this argument reliance was placed on the following words appearing in S.72 of Sch.9.

And any ordinance so made shall for the space of not more than six months from its promulgation have the like force of law.

It was argued that if an Ordinance is made retrospective its operation will commence from a date before the date of its promulgation and it may thus have force for a period longer than six months. I cannot accept this argument. All that R.72 said is that the Ordinance

shall have force for not more than six months from the date of its promulgation. I can see no reason why for the space of these six months the Ordinance cannot have retrospective effect. The period during which a law has force is quite a different matter from the effect which a law may have. There is, in my opinion, no bar to a temporary law having a retrospective effect. Further I would point out that since the India and Burma (Emergency Provisions) Act of 1940 (3 and 4 Geo VI, Ch.33) the words limiting the life of an ordinance to six months have been deleted. I now come to the fourth and last ground urged on behalf of the petitioners, viz. Even if the Ordinance be valid the orders of detention are bad as they were not made in accordance with the terms of R. 26 which the Ordinance has sought to validate. In my opinion this ground must prevail. Rule 26 says that the Provincial Government if it is satisfied with respect to any particular person that with a view to preventing him acting in a particular manner it is necessary to make an order directing him to be detained. Before an order of detention under R.26 can be passed, the Provincial Government must be satisfied about certain matters. This satisfaction is the condition precedent of an order of detention and indeed it is the only ground upon which the order can rest. Now what is meant by 'Provincial Government?'. Section 43a, General Clauses Act, defines Provincial Government thus.'

(13a) 'Provincial Government' as respected anything done or to be done by the 'Provincial Government' after the commencement of part 3, Government of India Act, 1935 shall mean – (a) in a Governor's Province, the Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment, according to the provision in that behalf made by and under the said Act.

In short it means the Governor acting on the advice of his Ministers or the Governor acting without and against such advice when he may so act. It follows from this that before an order of detention under R.26 can be made the Governor acting as aforesaid must be satisfied as regards the matters mentioned in the rule. I am not unmindful of the fact that it is not open to the Court to investigate whether there were sufficient grounds upon which the Governor could properly be satisfied. That is a matter entirely for the Governor to decide. But it is certainly open to the Court to enquire whether the Governor was in fact satisfied. The Advocate-General contended first that in view of the nature of the orders of detention passed in this case it is not open to the petitioners to say that Government was not satisfied. He pointed out that the orders were signed by a Deputy Secretary to the Government to Bengal and that they stated expressly that the Governor was satisfied. He then drew our attention to S.59 (1) and (2), Government of India Act, and argued that sub-section (2) precluded any one from challenging the fact that the Governor was satisfied. I am unable to accept this view. sub Section (1) and (2) of S.59 are in the following terms.

59. (1) All executive action of the Government of a province shall be expressed to be taken in the name of the Governor. (2) Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner as may be specified in rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor.

All that sub Ss. (1) and (2) lay down is that all executive orders shall be expressed in the name of the Governor and shall be authenticated in a particular manner. If it is so authenticated, no one can say that the Order is not valid on the ground that it has not been made by the Governor. The validity of the orders does not become unchallengeable on all grounds. The validity of the orders is not challengeable only on one ground, viz., that it is not an order

made or executed by the Governor. In this case the argument is not that the orders of detention are bad because they were not made or executed by the Governor, the argument is that the detention is bad because the Governor did not satisfy himself on matters on which he was bound to satisfy himself before he could pass an order of detention. Nothing in sub-section (2) of S.59 precludes this Court from inquiring whether the Governor was satisfied.

Next the learned Advocate-General argued that the Governor having stated that he was satisfied, it is not open to the Court to enquire whether in fact he was satisfied. I am not impressed by this argument. As I have said before I appreciate the argument that it is not for this Court to say that the Governor was satisfied on inadequate grounds or that the Governor's satisfaction was improper but it is always to this Court to investigate whether in fact he was satisfied. Ordinarily the *ipse dixit* of the Governor would be quite enough and it would be extremely difficult for any one to prove that the Governor was not in fact satisfied when he stated that he was. But in this case there are ample materials to prove conclusively that the Governor was not, in fact, satisfied. This takes me to the affidavits filed in this case.

Of the nine detenues affidavits have been filed on behalf of seven. On behalf of one of them viz., Sasanka Sekhar Sanyal, in addition to the affidavit sworn by the detinue an affidavit has been sworn by his cousin Nalinakshya Sanyal and to it was annexed the report of certain proceedings held in the Bengal Legislative Assembly during which the Home Minister made certain statements in answer to question put to him in the House. The learned Advocate-General objected to the report of the proceedings being put in evidence. His contention was that the statements of the Home Minister were not evidence at all, and that in any case they were not evidence of the truth of the facts stated by him. In this connexion he referred us to A.I.R. 1935 P.C. 34 which was decided by the Privy Council on appeal from the Court of Malta. That case really has no application as the facts were entirely different. Here the Home Minister was speaking on behalf of the Government as its spokesman and his answers to questions put to him, as Home Minister, in relation to matters dealt by him as Home Minister, are admissible in evidence as admissions made by the Government. Government is a party to these proceedings and therefore these admissions are relevant and admissible under the Indian Evidence Act, against the Government. The Crown may of course show that the admissions were really not admissions or that they were made under a mistake or that they were not binding on Government for any other valid reason, but unless this is shown the admissions must be taken in evidence against Government. Government was given an opportunity to answer the points involved in all the affidavits and the annexure and, on behalf of the Crown, Mr Porter the Additional Secretary, Home Department, has sworn an affidavit. After we decided to take the statements made by the Home Minister into the evidence it was agreed between the learned Advocate-General and the petitioners that these statements of the Home Minister would be taken into consideration in the cases of all the detenus so far as they may apply to their cases without separate affidavits containing those statements being filed in each case.

We pointedly asked the learned Advocate-General whether it was his case that the Governor personally was satisfied in terms of R.26 that in each of these cases an order of detention was necessary. He replied that he was not in a position to show this. He referred to the affidavit of Mr Porter and stated that in all the nine cases Mr Porter was satisfied. In the cases of Debabrata Roy, Pratul Ganguly, Birendra Ganguly and Narendra Nath Sen Gupta, the Home Minister was also satisfied. In the case of Birendra Ganguly, the Home Minister was satisfied subsequent to the passing of the orders of detention. In the case of Niharendu Dutta Majumdar and Sasanka Sanyal the orders were passed without the consent of the Home Minister. In the

cases of Bejoy Singh Nahar, Shibnath Banerjee and Noni Gopal Majumdar, Mr Porter under a general order of the Home Minister passed the order of detention without first consulting the Home Minister. In the cases of Bejoy Singh Nahar and Shibnath Banerjee subsequent to the order of detention materials regarding their case were placed before the Home Minister and he has not passed any order withdrawing the order of detention made by Mr Porter. In the case of Noni Gopal Majumdar the materials have not as yet been placed before the Home Minister for review.

The learned Advocate-General stated that except perhaps in the case of Sasanka Sunyal there was no question of the Governor being personally satisfied within the meaning of R.26. In Sasanka's case he said that the facts indicated that the Governor was personally satisfied but there was nothing expressly stated in the affidavits to this effect. His contention was that the law does not require the Governor personally to be satisfied and that the Governor could discharge this function through his Ministers or any of his officers without passing any specific orders delegating this particular function. He referred to Ss. 49 and 59, sub Ss. (3) and (4), Government of India Act, in support of his argument. Section 49 says that 'the executive authority of a province shall be exercised on behalf of His Majesty by the Governor, either directly or through officers subordinate to him'.

I fail to see how this section can be of any help in the decision of this point. The section deals with the executive authority of a province which is in His Majesty and which the Governor is empowered to exercise on behalf of His Majesty either himself or through his subordinates, it has nothing to do with a particular function imposed upon the Governor by the Defence of India Act, viz., the duty of satisfying himself regarding certain matters before he passes an order of detention under R.26 of that Act. I cannot see how this particular duty can be included in the term 'executive authority of a province'. Sub-section (2) of S.49 makes it impossible to include what I may shortly describe as 'the duty of satisfaction' which the meaning of the words 'executive authority of a Province'. That sub-section says that the executive authority of each Province extends to matters with respect to which the legislature of province has power to legislate. Now R.26, which imposes this duty of satisfaction' relates to many matters regarding which the Provincial Legislature cannot legislate, the functions imposed by the rule cannot therefore come within the meaning of the words 'executive authority of a province'. I would add in passing that I cannot subscribe to the view just expressed by my learned brother, Khundkar J., that a Minister is an officer subordinate to the Governor. In my opinion he cannot in any sense be so regarded. Next I hold that sub-section S.(3) and (4) of S.59. Government of India Act, which empowers rules of business to be made can be of no assistance to the Crown. These rules relate to the executive business of the Government. They cannot be made to apply to this particular duty. I am of opinion that the Governor cannot delegate his duty of being satisfied within the meaning of R.26 by recourse to the provision of S.59, Government of India Act. It may be contended that it could never have been the intention of the Defence of India Act that the Governor should look into the case of every person sought to be detained. This is quite a reasonable view. The Defence of India Act was made express provision for this difficulty in S.2 (5).

2.(5) A Provincial Government may by order direct that any power or duty which by rule and made under sub-section (1) is conferred or imposed on the Provincial Government, or which being by such rule conferred or imposed on the Central Government, has been directed under sub-section (4) to be exercised or discharged by the Provincial Government, shall, in such circumstances and under such conditions, if any as may be specified in the direction, be exercised, or discharged by any officer or

authority, not being (except the case of a Chief Commissioner's Province) an officer or authority subordinate to the Central Government.

The Governor is given express power to make an order directing this function to be discharged by some one else. He has made no such order S.2 (5) except in the case of the District of Chittagong and these cases are not of that District. He is therefore the only person who can discharge this function. He has certainly not discharged this function in the case of any of the nine petitioners except possibly in the case of Sasanka Sanyal. In that case also, although this point was expressly raised and argued at great length there is no positive evidence to show that he did so satisfy himself. This being the position the orders of detention must be considered to have been improperly made and the petitioners are entitled to be released forthwith from such detention. The statements of the Home Minister and the affidavit of Mr Porter disclose that certainly in seven of the nine cases before us the orders of detention were made in gross violation of the provisions of R.26, Defence of India Act.

I leave out of consideration in this connexion the cases of Debabrat Roy and Pratul Ganguly who were detained in 1940. In the case of Birendra Ganguly, Mr Porter said that he passed the orders of detention under R. 26 'in anticipation of the orders of the Home Minister, Bengal, who on 18th September recorded his approval of continued detention'. Now there is no provision in R. 26 for this procedure. There can be no detention under that rule until the detaining authority is satisfied that the detention is necessary for the purposes specified in the rule. There is no scope for an interim detention under R.26 which can be made absolute after satisfaction. Obviously the Home Minister was considered to be the person who was to be satisfied yet an order of detention is made by the Additional Secretary in anticipation of the Minister being satisfied. This seems a somewhat light hearted manner of administering the Defence of India Act. The order of detention of Birendra Ganguly was illegal in its inception and continued to be illegal as there is no provision in the Defence of India Act or in the rules thereunder by which a detention, illegal in its inception, can be converted into a legal one by subsequent ratification. Again, the statement of the Home Minister is that he adopted a certain 'device' in these cases. When cases for detention under R.26 were brought up to him he automatically passed orders of detention under R.26 before satisfying himself that the detention was necessary, thereafter at his leisure he investigated the cases and then confirmed the orders in some cases and set them aside in others. He says he did this because he wanted to give the arrested persons the greater creature comforts a detainee has and which a person under arrest under R. 129 cannot have. I suppose the Home Minister was under the impression that he was tempering justice with mercy. He forgot however that he was disobeying a salutary and essential provision of the law that he was supposed to be administering, viz., that no person should be detained under Rule 26 unless the detaining authority first satisfied himself that the detention for the purposes specified in the rule was necessary. I find it difficult to refrain from remarking, in passing, that the granting of additional amenities like an extra blanket or so would afford cold comfort to a person who is told when these amenities are being given that he is going to be detained under R.26, Government of India Act.

That this was the procedure followed is established not only by the statements of the Home Minister but by the affidavit of Mr Porter. He says in para 8 of his affidavit that on 1st October 1942 the Home Minister directed that as soon as a report of an arrest together with a recommendation by the police for detention was received an order for detention under R.26 should at once be issued as a matter of course. Mr Porter's order in the case of Birendra

Ganguli which was passed on 14th September 1942 seems to have been only a piece of intelligent anticipation of this General order. In the cases of Bejoy Nahar, Shibnath Banerji and Noni Gopal Majumdar Mr Porter says expressly that he acted in accordance with this General order. His averment in the last paragraph of his affidavit does not necessarily mean that even in these cases he was personally satisfied that an order for detention was necessary, for the purpose mentioned in R. 26. He says 'I was satisfied that it was necessary to issue the order.' The words used are significant. In view of the general order of the Home Minister issued on 1st October 1942, Mr Porter might well have been satisfied that 'It was necessary to issue the order' once the police report was received without at all troubling to be satisfied that the detention of the petitioners was necessary in order to prevent them from acting in the manner mentioned in the rule.

As regards the petitioner Narendra Nath Sen Gupta, his order of detention was sanctioned by the Home Minister on 17th October 1942, i.e., after the general order of 1st October 1942. In view of the statement of the Home Minister in the Assembly, it is reasonable to hold in the absence of any averment to the contrary that this order was also passed before satisfaction in order to give the petitioners superior comforts. His detention would also be improper even if we were to hold that it was not for the Governor personally to be satisfied. As regards the orders of detention passed on Debabrata Roy and Pratul Ganguly they do not seem to be tainted with the device adopted by the general order of 1st October 1942. These orders of detention were passed in 1940 but they would be improper on the other ground that the Governor had not personally satisfied himself regarding the necessity of the detentions. In the case of Niharendu Dutta Majumdar there is nothing to show who was satisfied. This order of detention is also not tainted by the general order of 1st October 1942 as it was made without any preliminary arrest under S.129 and served in his house in his absence. In his case an interim order of detention to ensure greater comforts was not necessary as he was not in custody at the time of the order. Nevertheless the order is improper as it has not been shown that the Governor was satisfied.

In the case of Sasanka Sanyal, it is also clear that the device of 1st October 1942, was not employed. His custody after arrest pursuant to R.129, Defence of India Rules, was not automatically converted into detention under R. 26 but the order is bad as it has not been shown that the Governor was personally satisfied that the detention was necessary. I thus find that the orders of detention in these nine cases are not only illegal because the Ordinance is ultra vires but also improper because the orders of detention were passed in violation of the safeguards, slender though they be, contained in the rule itself. These rules must therefore be made absolute and the petitioners set at liberty forthwith. It is not for us to criticise the wisdom or the propriety of the Defence of India Act or the rule made thereunder and, if they are found valid to administer them according to law. We realise that in times of emergency the executive have to be given extraordinary powers which may have the effect of keeping out, to some extent, judicial scrutiny of acts done by the executive. But when through some unexpected crevice in these barriers against judicial action a cry against an illegal act does reach this Court, it becomes our duty to be vigilant and to see that the liberty of none of His Majesty's subjects is touched except in strict compliance with the law and neither the clouds of war nor the dust of political upheaval must be allowed to obscure our vision or blur that strict scrutiny which we must always bring to bear upon any action which savours of oppression or injustice. I am tempted to quote the observation of Lord Atkin in 1931 A.C. 662 at page 670 which are very apt in this case.

In accordance with British Jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on condition that he can support the legality of his action before a Court of Justice and it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive.

I would only add that this Court shall always endeavour to maintain unimpaired this great tradition.

Rules made absolute.

R.K.

1. See Doc. No. 27 in this Chapter

34: Emperor v. Benoari Lall Sarma and others Respondents – Case No. 8 of 1943 [Varadachariar C.J., Zafrullah Khan and Rowland J.J. (4 June 1943)]

AIR, Vol. 30, Federal Court Calcutta, pp. 36-71

Varadachariar C.J. – This is an appeal by the Crown from a judgment of a Special Bench of the Calcutta High Court in a criminal revision case. It seeks the reversal of a Pronouncement by the High Court to the effect that certain provisions of an Ordinance (entitled the Special Criminal Courts Ordinance) published by the Governor-General early in 1942 are void or ultra vires the Governor-General. It is sufficient at this stage to say that the Ordinance provides for the constitution of three classes of Courts of Criminal jurisdiction, described as Special judges, Special Magistrates and Summary Courts and empowers Provincial Governments to appoint to these offices persons with specified qualifications.

[*Omitted*: Peculiarities of Ordinance 2 and the difficulty it imposes on the accused – Ed.]

As one reads the summary above given of the provisions of the Ordinance, it cannot escape notice that from the point of view of jurisdiction and powers, it is the High Court that has been most affected. The Summary Courts function along side the Subordinate Magistrates under the Criminal Procedure Code and the Special Magistrates along side the First Class Magistrates under the Code and the Special Judge along side the Sessions Judge: only they have been invested with increased powers and provided with a greatly simplified procedure. Excepting for a limited provision in S.13, the High Court is deprived of all powers over and concern with the administration of criminal justice in the cases dealt with under the Ordinance, deprived even of its powers of transfer or revision and of its special powers under S.491 and all this happens, not in respect of special crimes declared as such by the Ordinance, nor of crimes specially arising out of the war emergency or internal commotion, but even in respect of ordinary crimes under the Indian Penal Code. It was, to say the least, an embarrassing position for the High Court to be called upon to examine the validity of a law which has meted out such treatment to itself. The restrained observation of the learned Chief Justice that

'the position is a difficult one for us to deal with' seems true in a wider sense than the context may suggest.

[*Omitted: Elucidation of the provisions of the ordinance — Ed.*]

Pausing here for a moment, two results flowing from the provisions already referred to may be noted: (1) Any sentence passed by a Special Magistrate (who corresponds to a First Class Magistrate) is absolutely unassailable if it is a sentence of fine, whatever the amount may be — and S.12 fixes no limit to the fine he may impose — or if it is a sentence of imprisonment for a term not exceeding two years. (2) While a right of appeal is allowed in cases where the maximum sentence imposed does not exceed seven years, such right is denied in cases where heavier sentences, including the death penalty, are imposed, when the appeal will ordinarily lie to the High Court. It is not a recognition of the High Court as such, when the normal *cursus curia* is excluded and an undefined power of 'review' is conferred on a person nominated by the Government, though it be from amongst the Judges of the High Court. [Sub-head (2).] The provision which vitally affects the jurisdiction and powers of the High Court is that contained in S.26 of the Ordinance whereby, without any reference to the High Court by name, all authority to revise the order or sentence or to transfer any case or to make any order under S.491, Criminal P.C., and all other jurisdiction of any kind is excluded in respect of any proceedings of the Special Courts. In view of the obvious anxiety of the framers of the Constitution, as shown by S.223, Constitution Act, and para 13 of the Instrument of Instructions to preserve the powers and prestige of the High Courts unimpaired, the effect and the implications of this section of the Ordinance require to be closely examined. It may generally be stated that Ss.435, 439 and 526, Criminal P.C., ensure supervision and control by the High Court over the subordinate judiciary, particularly the magistracy, and S.491 (which in India replaces the general law relating to habeas corpus) invests the High Court with the means 'of putting a veto upon any proceeding not authorized by the letter of the law' and in effect 'determines the whole relation of the judicial body to the executive' (Dicey's Law of the Constitution, Edn. 9, p. 222). The High Court is deprived of both these kinds of power when any case is dealt with under the Ordinance. It is not without reason that for more than three quarters of a century it has been deemed necessary and proper to keep the revisional powers of the High Court under the Criminal Procedure Code much wider than revisional powers under the Civil Procedure Code (115 Civil P.C.). Apart from the importance of safe-guarding the life and liberty of the subject, the difficult position of the magistracy in this country demands it, as much in the permanent interests of the magistracy itself as in the interests of the citizen. Those who are familiar with the pages of the Indian law reports know how this revisional power has justified itself. But as has been frequently pointed out, the existence of this power even in reserve is a potent and whole-some influence, apart from its actual exercise. That its existence is as much called for today as it was in the middle of the last century will appear from three instances which we take at random.

In a recent case before the Chief Court of Sind, I.L.R. (1943) Kar. 105, the learned Judges (Davis C.J. and Weston J.) had to deal with an order of a District Magistrate permitting the withdrawal of a prosecution in one case and ordering further enquiry (under S.436) in a counter case. The facts and circumstances set out in the judgment speak for themselves. One or two passages will serve to show what the learned Judges felt about the proceedings in the Court below. The Public Prosecutor is stated to have appeared 'in his capacity as a private advocate' in the petition for further enquiry and 'as Public Prosecutor' in the connected

proceedings wherein he asked for leave to withdraw the prosecution from the District Magistrate who had transferred the complaint to his own file. The learned Chief Justice says:

This, in our opinion, was a most improper procedure. It is our experience in this Province that public Prosecutors do not withdraw cases except upon instructions of the District Magistrate, who in this case presided in the Court. These proceedings we think, merely illustrate the difficulties which arise when the District Magistrate fails to follow in letter and in spirit the provisions of the law by which he himself is bound and which it is his duty to respect . . . we think that in accepting the application the District Magistrate allowed himself to be used in a manner which, in our opinion, was clearly subversive of the proper administration of justice in his District.

The other two instances are recent cases heard in the Allahabad High Court one by Ismail J. and the other by the learned Chief Justice. They have not yet been reported, but as they were noticed in the Press, we requested the Allahabad High Court for, and by their kind courtesy have been furnished with copies of the two judgments. It so happens that both of them are cases tried under the Special Criminal Courts Ordinance and in both instances the learned Judges of the High Court before whom the matter was attempted to be brought found that the charges against the accused had nothing to do with the recent disturbances or with any subversive movement; and, though they were of the opinion in both the cases that the conviction was wrong, they felt helpless to do anything in the matter, because of S.26 of the Ordinance. They had to console themselves with an expression of their opinion as to what the law was. In the first case, ALL. Review Case No. 52 of 1943, all that appeared in the evidence was that one day a man was found by the police to have in his house small change to the extent of Rs 99. How he came by it, and when and whether it came to him at all after the rule under the Defence of India Act about acquisition of coins had been framed, there was nothing in the case to show and yet he was convicted and sentenced to eighteen months' rigorous imprisonment. There was no right of appeal nor the power of revision; and this is what the learned judge says in the course of his judgment:

If my interpretation [of the rule] is correct, it follows that the accused has been wrongly convicted. . . . In the present case, I have gone into the merits of the question because I feel that the conviction of the accused is illegal upon a correct interpretation of sub-cl. (d). [Rule 90 (2) (d) of the Defence of India Rules - Ed.].

In the case before the learned Chief Justice, ALL. Cri Revn. No. 408 of 1943 a father and three sons belonging to a zamindar family paying a Government revenue of Rs 5000 per annum and income-tax of Rs 1000 per annum were found to have 157 maunds of wheat stored in their house and some unlicensed arms. On a prosecution under R. 81, Defence of India Rules, each of the four members was fined Rs 2000 (rupees two thousand). The learned Chief Justice says:

'I cannot refrain from observing that the amount of fine imposed by the Special Magistrate was to my mind preposterous' and he adds that but for the provisions of the Ordinance.

I would have taken cognizance of the case in the exercise of my revisional jurisdiction and, in that case, I would have set aside the fine imposed on each of the three sons. I however am unable to do so as the provisions of S.26 of the Ordinance debar me.

There was however an application before the learned Judge objecting to the trial by the Special Magistrate, in view of a notification of the Provincial Government and that gave him an opportunity to say what the Magistrate should do. He said:

I am alive to the fact that, in his capacity as Special Magistrate, Mr Brij Bahadur is immune from the judicial supervision of this Court. He must however appreciate that he is also a Magistrate of the first class and in that capacity he is under the immediate subordination of this Court. It is therefore his duty to take note of all the observations contained in this order and . . . decide to try the case according to the ordinary law.

Under S.526, Criminal P.C., the High Court can direct the transfer of a case from one Court to another, if it is made to appear that a fair and impartial inquiry or trial cannot be had in the former Court. This provision has no doubt been often resorted to by the accused without sufficient justification and unnecessary delay and obstruction have thereby been caused. But none can take exception to the soundness of the principle embodied in it or to the need for its exercise in appropriate cases. In the first instance, the Ordinance excluded this power without substituting any other provision to meet such a contingency (S.14 and S.16 (2) could hardly be held to be a substitute). Later on, certain limited powers of transfer have, by Ss. 25A and 25B, been conferred upon the District Magistrate, the Sessions Judge and the Provincial Government; but the exclusion of the High Court's powers stands.

We have been reminded that the way the High Court's powers have been dealt with in the Ordinance is a question of policy with which the Court is not concerned. This ignores the bearing of this circumstance on the decision of the question whether the exercise of the power conferred on the Provincial Government or the District Magistrate under Ss.5, 10 and 16 of the Ordinance can be described, in the language of some of the cases, as merely doing something ancillary, subordinate, or incidental, or by itself involves results of such seriousness and magnitude that its exercise could not have been legally entrusted to these authorities. This has also an important bearing on the question of the relation of the Ordinance to the provisions of S.223, Constitution Act. Proceeding now to head (c), the relevant provisions are those contained in Ss.5, 10 and 16 of the Ordinance. Sections 10 and 16 run in the same terms as S.5, except that in S.16 the District Magistrate or the Chief Presidency Magistrate has been substituted for the Provincial Government. It will therefore be sufficient to note the terms of S.5. It provides that a '*Special Judge shall try such offences or classes or offences or such cases or classes of cases as the Provincial Government or a servant of the Crown empowered by the Provincial Government in this behalf may by General or special order in writing direct*'.

A later amendment refers to cases transferred under S.25A, such cases need not be separately considered, as they must have been instituted in some other Special Court in accordance with the provisions of the Ordinance. It is at this stage necessary to stress the fact that the Ordinance has not repealed the Criminal Procedure Code in whole or in part or declared it or any of its provisions inoperative in any part of the country or in respect of any defined categories of crimes. All that has been done is to provide that in respect of proceedings before the Special Courts, the provisions of the Code shall apply only so far as they are not inconsistent with the Ordinance, and even the provision in S.26 excluding the powers of revision, habeas corpus, transfer, etc., is governed by words referring to the acts of or proceedings in the Special Courts. It is therefore important to consider (in the words of Khundkar J.) how 'the field of trial by Special Courts is demarcated from the field of trial by ordinary Courts or the category of cases to be tried by the Special Courts has been carved out'.

To appreciate the force of the criticism against the provisions of Ss.5, 10 and 16, it will be useful to know how they are being worked in Bengal, as it has not been suggested that method of administration is not in conformity with the Ordinance. So far as is known, no General rules similar to statutory rules or by-laws have been framed to demarcate the field. Of course,

the Ordinance does not require such General rules to be framed and much less to be published. Announcements in the Gazette seem to have authorized the District Magistrates of certain districts to exercise the powers of a 'servant of the Crown' under Ss.5 and 10 of the Ordinance. Circulars seem to have been issued by the Secretary to the Government giving instructions as to how the District Magistrates should exercise their powers under these sections. The case out of which this appeal has arisen was tried by a Special Magistrate as the result of the specific order to that effect by the District Magistrate. In another instance, the District Magistrate is said to have made an order to the effect that 'cases arising out of the recent disturbances shall be tried by Special Magistrates'. Cases are said to have accordingly been brought before Special Magistrates on a certificate from the police to the effect that the cases arose out of the recent disturbances. The learned Chief Justice of the Calcutta High Court felt constrained to observe:

This is extremely unsatisfactory from the point of view of the subject. It makes the police the arbiter of a man's right as to how he shall be tried -

We may add, also the authority to decide whether the High Court can exercise any of its powers in the matter or not. Again, the Chief Justice said:

The man's rights as regards appeal and revision are not pre-determined by law . . . No man knows which Court he may be tried in. That is left to the District Magistrate nominally to decide, in fact it may be decided by the police

In another part of his judgment, the Chief Justice stated that a circular received from the Government of Bengal intimated 'that District Magistrates are instructed to use the Ordinance only in cases of hoarding and profiteering'. These are offences created by the Defence of India Rules and have nothing to do with the kind of disorder contemplated in S.1 (3) of the Ordinance. In the Allahabad cases already referred to, it is on the other hand stated that instructions have been issued by the United Provinces Government that the Ordinance procedure should be utilized only in cases arising out of 'the recent disturbances or connected with the existing subversive movement'. We refer to these facts not with a view to express any opinion on the merits or demerits of this state of the law or of the administration of Criminal justice, but only to show that whatever the intention and purpose of the Ordinance gatherable from the preliminary provisions may be, Ss.5, 10 and 16 are so worded that the Ordinance procedure can be utilized by the executive authorities at their will and pleasure, against anybody, for the trial of any crime, without any restriction imposed or guidance given by the Ordinance as to the cases to which its indisputably drastic provisions are to be applied. One aspect of the question accordingly arising for decision in the case is whether Ss.5, 10 and 16 of the Ordinance do not in effect delegate to the executive authorities therein specified power which should have been exercised by the legislative authority.

One serious point for decision arises out of the provision in S.292 Constitution Act, to the effect that all the law in force in British India before 1st April 1937, shall continue in force in British India 'until altered or repealed or amended by a competent Legislature or other competent authority'. The Criminal Procedure Code and other special laws which contain special provisions relating to the jurisdiction of Courts dealing with crimes provided for in such special laws are among the laws thus continuing in operation. Section 5 of the Code provides:

5. (1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offence under any other law shall be investigated, inquired into, tried and otherwise dealt with according to the same provisions, but subject to any enactment for the time being in force regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Sections 28 and 29 of the Code run as follows:

28. Subject to the other provisions of this Code, any offence under the Indian Penal Code may be tried –

- (a) By the High Court, or
- (b) By the Court of Session, or
- (c) By any other Court by which such offence is shown in col. 8 of Sch. 2 to be triable.

29. (1) Subject to the other provisions of this Code, any offence under any other law shall, when any Court is mentioned in this behalf in such law, be tried by such Court.

(2) When no Court is so mentioned, it may be tried by the High Court or subject as aforesaid by any Court constituted under this Code by which such offence is shown in the eighth column of the second schedule to be triable.

So long as these three sections have not been 'altered, repealed or amended by a competent Legislature or other competent authority', they must govern every criminal proceeding both as regards the tribunal by which a crime is to be tried and as to the procedure to be followed (including rights of appeal, revision, etc.). It is contended on behalf of the Crown (i) that in view of S.1 (2), Criminal P.C., it is not necessary that the Code should be 'repealed or amended' before the special jurisdiction and powers conferred by the Ordinance and the special procedure prescribed therein can take effect, and (ii) that, in any case, the necessary repeal or amendment has been effected by the Ordinance itself.

Next, S.223, Constitution Act, provides that the jurisdiction of any existing High Court and the respective powers of the Judges thereof in relation to the administration of justice in the Court shall be the same as immediately before 1st April 1937, 'subject to the provisions of any Act of the appropriate Legislature enacted by virtue of powers conferred on that Legislature by this Act'. Counsel for the Crown contends that by virtue of the provision in S.311 (6), Constitution Act, the jurisdiction and powers of the High Court can be modified by an Ordinance and that this has been done by the impugned Ordinance. As already indicated, a further question arises, whether Ss. 5, 10 and 16 of the Ordinance do not in effect delegate to the executive authorities therein specified an undefined and uncontrolled power in respect of matters which should have been provided for by the legislative authority itself. It is replied on behalf of the Crown that this is a matter of policy which it is not for the Court to discuss.

The learned Chief justice of the Calcutta High Court was of the opinion that the relevant provisions of the Criminal Procedure Code had not been repealed by the ordinance itself, but that Ss. 5, 10 and 16 empowered the Provincial Government and persons authorized by them 'to repeal ad hoc certain provisions of the Criminal Procedure Code and of the Letters Patent of the High Court'. This is stating the position from the divestitive view-point, if we may use a convenient term, that is, by referring to the manner in which the jurisdiction of the regular Courts is attempted to be excluded. The other learned Judge (Khundkar J.) took the view that the ordinance has conferred on the Provincial Government and its authorized officers a power to do by individual direction in particular cases what should properly have been brought about by legislation or at least by rule. . . . (It) is a power to effectuate jurisdiction

of special criminal Courts by making orders in individual cases or groups of cases and the exercise of that power is entirely unconfined by any rule or condition.

In another place, he said:

The jurisdiction of the Special Courts under the ordinance is undetermined until it is attracted to a particular case by the order of an executive authority.

This seems to deal with the matter from what may be described as the investiture point of view, that is, the way in which the Special Courts are invested with jurisdiction to try any particular case. If it should be held that the ordinance had not itself repealed the relevant provisions of the Criminal Procedure Code in respect of any particular case, the question would arise (apart from the appellant's arguments based on S.1 (2) of the Code): Whether on a proper construction of Ss. 5, 10 and 16 of the Ordinance and whatever may be the language or drafting device employed, it is not the executive act of particular officers passed in individual cases or classes or cases that really takes away the jurisdiction of the regular Courts and in effect invests the Special Courts with jurisdiction in respect of those cases.

Dealing first with the contention that the material provisions of the Criminal Procedure Code have been repealed or amended by the ordinance itself, the position is — and this is admitted by the Crown — that, in the Province of Bengal, there are now two sets of Courts, the ordinary Criminal Courts and the special criminal Courts, both working side by side, but with fundamental differences in their procedure and very serious consequences to the prejudice of the accused flowing out of these differences. The allotment of a case or of a group of cases to the Special Courts, which will prevent their going before the regular Courts, undoubtedly results from the order, general or special, passed by the District Magistrate (or Presidency Magistrate) under Ss. 5, 10 and 16 of the Ordinance. But unless, prior to the moment when the District Magistrate so allots the case for trial by a Special Court, the provision of the Criminal Procedure Code as to the Court by which a particular case is to be tried has been excluded in a manner recognised by law, it is difficult to see what authority the District Magistrate, as an administrative officer, can have to direct it to be tried by any other Court. Counsel for the Crown at one stage suggested that the Criminal Procedure Code would not apply to the Special Courts except to the extent to which it was made applicable by the ordinance itself. But he admitted later on that in view of S.5 of the Code 'all offences under the Indian Penal Code' must be 'investigated, enquired into, tried and otherwise dealt with' according to the provisions of the Code. The same principle applies even to offences under any other law, subject, of course, to any other enactment regulating the manner or place of investigation, enquiry, trial, etc. As already stated, the ordinance itself creates or declares no new offences; and the combined effect of Ss. 5, 28 and 29 of the Code, is that unless those provisions are specifically excluded by law, the code will govern the institution and trial of every criminal case.

We have carefully considered the terms of the ordinance; we find it impossible to accede to the contention that before and independently of the order under S.5, 10 of 16, the relevant sections of the Code are excluded by the ordinance. The material provisions of the ordinance only enact that in respect of cases tried by the Special courts, a certain procedure shall be followed. But this does not bear on the question which cases are to be tried by the Special Courts as distinguished from cases to be tried by the regular Courts. The words in Ss.10 and 16 which exclude particular offences from the jurisdiction of Special Magistrates and Summary Courts respectively cannot affect the question, because their jurisdiction to try any particular

case even when it does not fall within the excluded categories arises only on and out of the order of the authorized officer. Section 27 is worded not as a provision excluding the Criminal Procedure Code, but as a provision extending it to proceedings before the Special Courts so far as they are not 'inconsistent with the provisions of the Ordinance'. But even if one should be prepared to read S.27 as an 'excluding' provision, it can take effect only if and after any particular case goes before any of the Special Courts.

The feature of the Ordinance to which the strongest objection has been taken not merely by counsel for the accused but also by the learned Judges of the High Court is that which places it in the power of the District Magistrate — who practically represents the prosecution — to discriminate between man and man in the same locality — it may be even in respect of the same or a similar crime -- and to send one of them for trial by a Special Court, with all the risks and dis-advantages which the special procedure involves, while leaving the other to be tried in the normal course by the regular Courts. It will require no special knowledge of Indian conditions to appreciate what such a power in the hands of the executive means and involves. The limited option allowed by Ss.178 to 183 of the Code to the Government or to a complainant to choose as between two or more Courts bears no analogy. That option is available only in the few cases carefully defined in the Code itself and relates after all only to the locality of the trial. It does not involve a change in procedure nor deprive the accused of the safe-guards and privileges provided for him by the Code. Any real hardship to the accused, if it arises out of such choice of forum by the Government or the complainant can be remedied by suitable orders under S.526.

The Advocate-General of India asked us to presume that the power under Ss.5, 10 and 16 would be exercised by responsible officers and only on reasonable grounds. In answer to this, we must observe that when a question of principle is involved, it is scarcely fair to complicate it by introducing considerations of personalities. It must also be pointed out that S.5 of the Ordinance does not even prescribe that the servant of the Crown to be empowered thereunder should be at least of a certain official grade. The strongest answer however to this argument is furnished by what is stated to have occurred in Parliament in August 1940, when the bill, which subsequently became the Emergency Powers (Defence) (No. 2) Act, 1940, 3 & 4 Geo VI, Ch. 45 was before the House of Commons. When there were complaints as to certain defects in the bill, particularly the absence of a provision for appeal, 'the Government asked Parliament to rely upon their reasonable use of the wide powers remembering the opportunity which Parliament has of annulling Defence Regulations'. The bill was however subjected to fierce criticism in the House of Commons, on the ground that according to its terms, Special Courts could be empowered to impose even the death penalty without any right of appeal. Members were unwilling to rely on an undertaking to provide in the Regulations for appeals from Special Courts. The Government finally promised to introduce an amendment in the House of Lords and provision was accordingly made in the statute itself for review of the decisions, particularly in cases in which a sentence of death was passed. [Butterworth's *Emergency Legislation Service-Statutes Supplement* No. 6, Preliminary Note on p. 20. Sir Cyril Carr also refers to this incident, in his *Lectures on Administrative Law*.] When one takes note of the relation of Parliament and of public opinion in England to the working of a statute and of the corresponding situation in this country, especially in relation to ordinances, and when one also remembers that this debate in the House of Commons took place on the eve of the German blitz and in spite of the fact that according to the main statute [2 and 3 Geo, VI, Ch.62, s.8] every order containing Defence Regulations should be laid before Parliament and

could be annulled by a resolution of the House, the weakness of the argument based on the trust to be placed in the executive authorities becomes obvious.

As counsel for the Crown attempted to found an argument on Regulation No. 7 of the Defence (War Zone Courts) Regulations, 1940 (dated 7th August 1940), it is necessary to make a passing reference to them. It is specially worthy of note that the Regulations of 7th August 1940, as well as the Defence (Administration of justice) Regulations of 19th June 1940, differ fundamentally from the impugned Ordinance in that they do not make it possible for the executive authorities to discriminate between one accused and another. As we have already pointed out, that is the most serious defect in the impugned Ordinance. The scheme of the English Regulations is to provide that all persons charged with indictable offences before justices in certain areas should, when it is not practicable to hold the trial in that area, be committed to be tried at the assizes at other named places, that is, on the assumption that military exigencies may make it impossible to hold the Court at particular places. The next step is to make provision for a less dilatory and more flexible procedure and even here no room has been given for discriminating one between one man and another. As pointed out in Butterworth's Preliminary Note, the new Regulations replace committal to assizes or quarter sessions by committal for trial by a war zone Court. A comparison of the Regulations themselves and of the rules made by the Lord Chancellor thereunder with the impugned Ordinance will constitute an interesting study in contrast between the methods adopted in England and the methods adopted in this country to deal with the emergency; but we refrain from doing so, as it will take us into a long digression. It is sufficient to refer to Regulation 7 on which learned counsel for the Crown based an argument that something in the nature of an option was left to military or police officers to choose whether an accused should be tried by a war zone Court or by one of the regular Courts. This is based upon a misreading of that Regulation. The following note in Butterworths' publication under that Regulation will explain its scope and effect and also the meaning of the proviso to Para (1) of Regulation 7:

Note — It will be seen from this Regulation that the procedure in war zones in relation to summary offences and up to the committal for trial in relation to indictable offences is, subject to the power of short-circuiting the jurisdiction of justices under the proviso to para (1) [which by virtue of the provisions of Regulation 6 (1) ante will enable proceedings in respect of a summary offence to be initiated before a war zone Court], the normal procedure of information or charge before justices'.

Read in the light of this note and of the context, all that the proviso to para (1), on which counsel relied, means, is that, at the choice of the officers named, the proceedings may be initiated directly in the war zone Court instead of coming to that Court through the normal channel of information or charge before justices. That is what the note refers to as short-circuiting [cf. R.4 of the Lord Chancellor's Rules, dated 19th September 1940]. There is no question of sending one man for trial and sentence by one Court and sending another man accused of the same or a similar crime for trial and sentence by another kind of Court, at the option of any executive officer; and it will be noticed that even the limited power given by the proviso to the officer is available only when he 'considers it expedient by reason of the military situation' to adopt that particular course. The jurisdiction of the war zone Courts over any particular case does not result from the choice or order of an officer of the Crown, but by the general declaration in Regn. 6, that a war zone Court shall have jurisdiction to try any person charged with an offence punishable whether by virtue of any enactment or at common law by the High Court, a Court of assizes, a Court of quarter sessions, or a Court of summary

jurisdiction. [See also Regn. 16, which authorizes the Lord Chancellor to make the necessary rules and excludes the operation of all other enactments as to practice and procedure.]

[*Omitted: a long portion discussing British and American judgements on delegated legislation — Ed.*]

It has no doubt been always recognised that some authority in the State should be in a position to enact necessary measures to meet extraordinary contingencies. Section 72 of Sch. 9 makes ample provision for it; the question is about the manner of exercising that power. Before applying the analogy based on the English practice as to emergency legislation, certain differentiating circumstances must be borne in mind. In England even, emergency legislation is parliamentary legislation or Order in Council passed under the authority of parliamentary statute and it is always subject to parliamentary control, including in the last resort the right to insist on the annulment or modification of the Order in Council or even the repeal or modification of the statute itself. Under the Indian Constitution, the Legislature has no share in or control over the making of an Ordinance or the exercise of powers thereunder, nor has it any voice in asking for its repeal or modification. Again, anything like a serious excess in the use of special emergency powers will, under the English practice, be a matter which Parliament can take note of when the time comes for passing the usual indemnity Act on the termination of the emergency (see Dicey's *Law of the Constitution*, p. 236, and Carr's *Administrative Law*, pp. 69 and 70). That is not the position here, as the indemnity can be provided by an Ordinance. As against all this, the only safe-guard provided in the Indian Constitution is that the matter rests entirely upon the responsibility of the Governor-General. This only confirms the argument against delegation of such responsibility, at least without laying down in clear and definite terms the limits and conditions governing the exercise by executive officers of powers conferred upon them by the Ordinance. Today, in India, the situation is complicated by the fact that when large and undefined powers are entrusted to Provincial Governments and their executive officers, the constitutional limitations, conventions and etiquette implied in the theory of provincial autonomy make it difficult even for the authority promulgating the Ordinance to interfere to check the improper use of such powers.

In his book on 'Delegated Legislation' (based on his Cambridge Lectures and published in 1921), Sir Cyril (then Mr) Carr, observed: 'In so far as delegated legislation contains the germ of arbitrary administration every possible safeguard must be devised' (p. 26). He suggested five safeguards, of which two deserve to be noticed here: (a) the limits within which the delegated power is to be exercised are to be definitely laid down, and (b) the further point to be insisted on is publicity. The second safeguard does not merely mean publication, but was explained by the author himself as follows: 'Like all other law, it ought not only to be certain, but also ascertainable.' Reviewing these safeguards after the lapse of about twenty years, and 'in the light of ripper acquaintance' (as he claimed) Sir Cyril, in his recent lectures on *Administrative Law*, explains the first of the above safeguards as follows:

I meant that the control by the law courts (by way of declaring a rule or order ultra vires) should be made as simple and easy as possible by inserting precise words in the enabling Act (p. 51)

A comparative study of the Ordinances promulgated by the Governor-General during the last two decades will reveal a progressive diminution in the definiteness and completeness of the relevant legislative provision and a corresponding expansion of the limits of executive intervention in the determination of the form and the procedure applicable. The earlier

Ordinances were limited to defined categories of crimes with reference to their nature, time, place or purpose and the choice of the forum even in such cases was left to the Governor or the Government to make. The practice has now been extended to all offences and the choice of the forum (with all serious consequences under the present Ordinance) has been entrusted to any servant of the Crown who may be authorized by the Provincial Government. This sufficiently illustrates the truth of Sir Cyril (then Mr) Carr's observation above cited.

As we have already observed, the considerations and safeguards suggested in the foregoing passages may be no more than considerations of policy or expediency under the English Constitution. But under Constitution like the Indian and the American, where the constitutionality of legislation is examinable in a court of law, these considerations are, in our opinion, an integral and essential part of the limitation on the extent of delegation of responsibility by the legislation to the executive. In the present case, it is impossible to deny that the ordinance making authority has wholly evaded the responsibility of laying down any rules or conditions or even enunciating the policy with reference to which cases are to be assigned to the ordinary criminal courts and to the Special Courts respectively and left the whole matter to the unguided and uncontrolled action of the executive authorities. This is not a criticism of the policy of the law – as counsel for the Crown would make it appear – but a complaint that the law has laid down no policy or principle to guide and control the exercise of the undefined powers entrusted to the executive authority by Ss.5, 10 and 16 of the Ordinance.

We are of the opinion that the Ordinance has not by itself repealed Se. 28 and 29, Criminal P.C. (if such repeal were necessary – as we think it was) that notwithstanding drafting devices, it is only the order of the executive authority passed under S.5, 10 or 16 of the Ordinance, in respect of each case or group or class of cases that in fact operates to repeal those provisions of the Code to divest the regular Courts of their jurisdiction and to invest the Special Courts with jurisdiction to try any particular case or group or class of cases. We are also of the opinion that such executive orders cannot in law have any such effect and that Se. 5, 10 and 126 of the Ordinance are open to objection as having left the exercise of the power thereby conferred on executive officers to their absolute and unrestricted discretion, without any legislative provision or direction laying down the policy or conditions with reference to which that power is to be exercised. The powers of the High Court, though in form taken away by S.26 of the Ordinance are in fact only taken away by the order of the executive officer, because it is only on such order or direction being given that any case becomes a proceeding before a Special Court for the purpose of S.26. We accordingly agree with the High Court that the Court which purported to try and convict the respondents had no jurisdiction to do so.

We would affirm the judgement of the High Court and dismiss the appeal.

Rowland, J. – [*Omitted: earlier part of his judgement discussing general points – Ed.*]

In the Calcutta High Court, Derbyshire C.J. and Khundkar J. rejected the contention of the present respondents. Derbyshire C.J. said:

‘The argument raised by the applicants was that although under S.72 Government of India Act, the Governor-General was the judge of the emergency which gave him authority to make Ordinances, he could not delegate that judgment to the Bengal Government so as to enable them to say when the Ordinance should be brought into operation. Another argument was that there were two emergencies; (1) when the Ordinance was made and (2) when it was brought into operation in Bengal and that consequently the second emergency is not one

contemplated by S.72. In my view there is no substance in this contention. An emergency arose in September 1939 when war with Germany was declared. This was announced in the Gazette of India Extraordinary, dated 3rd September 1939, as follows: 'In pursuance of sub S(I) of S.102 Government of India Act, 1935, I, Victor, Alexander, John Marquess of Linlithgow, Governor General of India, by this Proclamation declare that a grave emergency exists whereby the security of India is threatened by war'. The same day war was proclaimed between His Majesty and Germany. That emergency continues: in December, 1941, it grew graver because Japan declared war on the British Empire and joined Germany and began to invade Burma. Anything might have happened sooner or later and steps had to be taken to deal with whatever might happen. The Governor-General taking a conspectus of the situation with the assistance of his military advisers, was bound to envisage a possibility of an attack being made upon India and took such measures that he might deem proper in respect of that attack. The emergency at that time demanded action on his part and one of the steps he took was to make and promulgate this Ordinance by setting up Special Courts to deal with the situation that might arise later. That emergency did not cease; it continued and grew in intensity until the Japanese were very near the border of India and Burma. That stage of the emergency being reached — it was the same emergency but more acute — it became the duty of the Government of Bengal to consider whether it ought to act under the powers conferred upon it. The Government of Bengal then on 3rd April 1943, brought into operation the Ordinance. This kind of conditional legislation is well known and recognised in the Courts since the case in (1878) 3 A.C. 889.

[*Omitted*: Khundkar's views, which were also quoted — Ed.]

To me the above reasoning of both these learned Judges appears cogent; the view taken by them is moreover in accordance with the (hitherto I think uniform) current of authority in the other High Courts, witness the decisions following: (1942) F.L.J. (H.C.) 233 from Allahabad; 15 Bom. L.R. 323 from Bombay; (1942) 5 F.L.J. (H.C.) 270 = A.I.R. 1943 Pat. 24 from Patna; I.L.R. 1913 Nag. 73 from Nagpur; (1942) 5 F.L.J. (H.C.) 284 from Oudh, besides an earlier decision of the Calcutta High Court in (1913) 61 L.J. (H.C.) 1:47 C.W.N. 354. I would simply follow those decisions without reiterating the grounds on which they are based but that Sen J. has in the case under appeal taken a contrary view holding, not that there was no emergency but that the Governor-General had not judged that there was an emergency. It followed, he thought, that the rule in 58 I.A. 169 did not apply, or rather, was to be applied in the contrary sense; and he concluded that the Governor-General had no jurisdiction to make an Ordinance. I must therefore examine the reasoning on which that conclusion is based. This part of the judgment occupying 20 pages in the brief is too long to reproduce here in extenso: but I shall try, in summarizing what appear to me to be its essential points, not to do the learned Judge injustice, or expose myself to the charge of parodying rather than depicting his line of thought.

First he accepts the contention that although the preamble states 'an emergency has arisen which makes it necessary to provide for the setting up of special criminal Courts', the contents of the Ordinance themselves show that the Governor General was not of opinion that an emergency existed. He cites from 58 I.A. 169 a passage containing the following dicta: A state of emergency connotes state of matters calling for drastic action which is to be judged by someone. That someone must be the Governor General alone. Emergency demands immediate action.

The learned Judge reasons an emergency exists if the Governor-General thinks that an emergency exists. The Governor-General has power to promulgate an Ordinance only if he

thinks or judges that there is an emergency which necessitates the promulgation of the ordinance. I may interrupt the summary by saying that here the learned Judge goes beyond S.72 According to the section there must be an emergency: according to the Judge there must be an emergency which necessitates the making of the particular Ordinance'. By analysis of the preamble the fallacy will appear. It could have been worded thus: 'an emergency has arisen: and that emergency makes it necessary to provide for the setting up of special criminal Courts'. Reading it so, there are two propositions and the incorrectness or supposed incorrectness of the second need make no difference to the truth of the former, which for the purpose of giving power to legislate, is enough.

The argument continues, even if an emergency exists and the Governor-General does not think there is an emergency he cannot promulgate an Ordinance. It is what the Governor-General thinks that matters. My comment is, the statute does not say this. The condition precedent is, under S. 72 the emergency; the Governor General's judgement of it is proof of the emergency, but does not take its place as the condition precedent.

Continuing the argument, the Court, it is said, must decide whether or not the Governor-General has in fact judged that there is an emergency. That is the sole test; whether or not there is an emergency is irrelevant. If I am right in my previous comments, this is not the test at all. But for following the argument, let it be assumed to be so. It is then said that the Court applying this test must act on its finding. If the Governor General had said, 'I do not think there is an emergency, which necessitates the promulgation of this Ordinance would be ultra vires. If he said 'I do not think there is an emergency now but there may be one later', the Ordinance would be equally invalid. We must investigate the state of his mind; a question of fact capable of being determined like any other question of fact.

If that be indeed a question of fact, it is to be determined on evidence: and Mr Banerji for the Crown reminded us of some significant dates of which he contended that we could take judicial cognizance, as matters of history:

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| Japan made war | 7-12-1941 |
| Essential Services (Maintenance) Ordinance 11 of 1941 (Promulgated) | 2-12-1941 |
| Bombing of Rangoon | 23-12-1941 |
| Second Bombing | 25-12-1941 |
| Special Criminal Courts Ordinance of 1942, promulgated | 25-12-1942 |
| Penalties (Enhancement) Ordinance 3 of 1942, promulgated | 2-1-1942 |
| Motor Vehicles (Drivers) Ordinance 5 of 1942, promulgated | 27-1-1942 |
| National Services (Technical Personnel) Amendment Ordinance 6 of 1942 promulgated | 29-1-1942 |

The preamble to Ordinance XI of 1941 recites that an emergency has arisen which makes it necessary to make provision for the maintenance of certain essential services; and the Ordinance imposes penalties on those who being employed on services essential to securing the defence of India, the public safety, the maintenance of public order or the efficient prosecution of war, or for maintaining supplies or services necessary to the life of the community

desert their employment. This was to stop the wholesale exodus already going on from Calcutta, which received an impetus when Rangoon was bombed. The preamble to Ordinance III of 1942 recites that an emergency has arisen which makes it necessary to enhance in certain circumstances the penalties provided by law for the punishment of certain offences; and the first of the operative sections (S.3) enhances the punishment for theft in any premises which have been damaged by war operations or evacuated by reason of attack or apprehended attack by the enemy; or for looting of property left unprotected as a consequence of war operations. Other provisions deal with sabotage. The preamble to Ordinance V of 1942, recites that an emergency has arisen which makes it necessary to take powers to require persons capable of driving motor-vehicles to place themselves and their services at the disposal of Government; and the enacting portions provides machinery to this end:

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| The Japanese entered Singapore | 15-2-1942 |
| The Japanese occupied Rangoon | 15-3-1942 |
| The Japanese occupied the Andaman Islands, a part of British India | 23-3-1942 |

A steady stream of refugees from Burma estimated at over a million was coming in to India from December 1941 to the time of the monsoon of 1942.

Sen J. has said in his judgement that it is not open to us to take into account historical facts or any extraneous evidence either as to whether an emergency existed or whether the Governor General had judged an emergency to have arisen. But according to Lord Halsbury in 1899 A.C. 143 such topics as the history of the legislation and the facts which give rise to the enactment may usefully be employed to interpret the meaning of the statute, though they do not afford conclusive argument. In my view the Governor-General's mind is not a question for us to inquire into; but if we are at all to enter on such an investigation I do not see why historical facts should be excluded from its purview. Especially significant, I think is the fact that Ordinance II and Ordinance III of 1942, the latter of which was to come into force at once, were made and promulgated on the same day. How can the Governor General in one day both judge that an emergency exists and that it does not exist? Can we presume to impute to the Governor General a weak and vacillating temper? Are we to fancy His Excellency, sitting in his Special Train, the hum of the wheels singing in his ears the refrain 'Emergency, Emergency, Emergency, Emergency'? The train jogs over points, the rhythm changes to 'No Emergency yet no emergency yet'. Then His Excellency makes ordinance II. The wheels resume their old tune 'Emergency, Emergency, Emergency', and His Excellency make Ordinance III. I am not speaking in a spirit of levity. I am very much in earnest, but so strong is my dissent from the line of argument I am examining that without some safety valve I could hardly restrain myself from commenting on it with undue warmth. It is not I who say that the state of mind of His Excellency is a subject for our speculation. I say, once you start speculating where are you going to stop?

But let us resume the argument, still assuming the reasoning to be so far correct. Only the statute, it is said, can be looked to: and the learned Judge refers to S.1(3) of the Ordinance, the terms of which are:

It shall come into force in any Province only if the Provincial Government being satisfied of the existence of an emergency arising from any disorder within the Province or from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the official

Gazette, declares it to be in force in the Province, and shall cease to be in force when such notification is rescinded:

Provided that any trial or proceeding which was pending at the time of such rescission may be continued and completed as if the provisions of this Ordinance were still in force.

This sub-section, it is stated, contradicts the preamble. Emergency legislation is something drastic and immediate; the Governor General is not vested with prophetic powers enabling him to legislate with respect to some emergency which has not arisen. If the Governor General judged that such an emergency had arisen he would take immediate action by setting up special Courts. He does nothing of the sort. He sets up nothing. He says that the ordinance itself is not in force and shall not come into force until the Provincial Government considers that it should be brought into force by reason of its being satisfied that a certain kind of emergency exists.

Stress is laid on words 'only if' in S.1(S) as showing that the Governor General did not think at the time of promulgating the Ordinance that any emergency which required to be met immediately by this Ordinance actually existed; again my comment is we are not to read into S.72 any such requirement as that it called for a finding as to 'an emergency which required to be met immediately by this ordinance'. This section only speaks of 'an emergency'.

The argument continues, the preamble and S.1(3) are contradictory, as to the existence of the supposed requirement. The learned Judge satisfies himself, by what with due respect, I can only call a round about process of reasoning, that it can be inferred that the Governor General did not think that 'an emergency which required to be met immediately by his ordinance existed and then he said S.1(3) contains a clear and unambiguous statement'.

Do I dream? Am I in Wonderland? Have we met in the person of the learned Judge, what Lord Atkin might call a new Humpty Dumpty? How much over time are the words to earn by meaning what the learned Judge says? For it seems to me that the boot is on the other foot. It is the preamble and not the section which contains a clear statement. As Khundkar J. in the passage quoted has said 'the preamble contains clear words showing that the Governor General had decided that an emergency existed'.

The reason which moved the learned Judge to apply the terms 'clear and unambiguous statement' to S.1 (3) was apparently to bring the matter within the scope of the rule that 'the preamble cannot be made use of to control the enactments themselves, when they are expressed in clear and unambiguous terms'. Manifestly, if the statutory words are not clear and unambiguous the rule does not apply. Applying that rule, the learned Judge says: 'The preamble cannot be used to alter or deduct from or add to this clear and unambiguous statement in the enactment itself'.

I think, with respect, the learned Judge has not appreciated the true scope and meaning of the rule, or the principle underlying it. In my view the rule is a particular application of a wider principle in construing every kind of instrument by which a legal right is created, obligation imposed or power conferred: you are to look to the actual words creating the right, imposing the obligation or conferring the power, as the case may be. If such words are in the enactment, it is to that we must look; if in a preamble, to that. Here the words authenticating the power of the Governor-General to legislate are in the recital, 'whereas an emergency has arisen'. They are clear and unambiguous and we are to look to them only.

The learned Judge notices, and scouts, the arguments that an emergency existed which made it necessary not to set up special Courts immediately but merely to provide the machinery

for it. On this point the reasoning of Derbyshire C.J. and Khundkar J. is so clear and convincing that I will content myself with saying that I adopt it and have nothing to add to it.

1. [Justice Zafrullah Khan's judgement is not printed. He agreed with the Chief Justice on the question that Sections 5, 10 & 16 of ordinance 2 were *ultra vires*. So the majority opinion of the two Indian judges prevailed – Ed.]

35: Official Notings – Access to legal advice (dt 11.6.43–29.6.43) (extracts)

File No. 3/16/43 – Home Poll (I)
[NAI]

Official Notings (extracts)

H.M. Home's first proposal is that an order should be made by the Central Government under rule 28 of the Defence of India Rules regulating the access of legal advisers to security prisoners. He says that no more than one such interview need be allowed before an application, and that whether more interviews will be required subsequently must depend on the attitude of the court. Further, that it should be provided that any interview should take place within hearing.

2. The point of having recourse to rule 28, as opposed to rule 26(5), is that orders made under rule 28 will attract section 3 of the Defence of India Act, whereas 'determinations' under rule 26(5) will not; the object being to provide something against which the direction of a High Court will not prevail. That being so, apart from the objection to coercing the courts, I doubt whether an order under rule 28 is really necessary to provide for the regulation of interviews before an application is made to a court, since there can then be no question of offering a barrier to a direction by the court, and the access of a legal adviser, unsupported by such direction, could apparently be controlled equally effectively under rule 26(5). If a legal adviser, dissatisfied with the number or nature of interviews he was allowed, proceeded to a court and sought and obtained a direction that he should be allowed more interviews, the case would be taken out of this category and fall under any regulations governing interviews granted in pursuance of a direction by a court.

3. When an application had come before the court, it is possible that the court might direct (a) that a legal adviser should be granted a further interview or interviews, in excess of what the executive authority considered necessary, or (b) that the interviews should take place at a time or in a place or manner to which those authorities took objection.

4. Para 2(3) in Sir Richard Tottenham's note of the 18th May¹ appears designed to meet (a). This seems to me to go beyond H.M. Home's intention where he says that whether more interviews will be required subsequently must depend on the attitude of the court. The only object in making an order attracting section 3 of the Defence of India Act as proposed by Sir Richard Tottenham would be, so far as I can see, to enable the executive authority to refuse an interview when a High Court had directed that one should be allowed. Sir Richard Tottenham's argument in favour of this course will be found in para 1 of his note of the 2nd May.² It is undoubtedly true that the responsibility for detaining prisoners without trial is an

executive responsibility; but it is equally true that it has always in British constitutional practice been recognised to be a judicial responsibility to see that such detention is affected in accordance with the law. If a judicial authority considered that to enable it to discharge its responsibility a detained prisoner must be produced, or be permitted to interview his legal adviser, and an executive authority (and a District Magistrate at that) sought to place obstacles in its way, it can hardly be doubted that (except possibly in a case where the executive could produce quite extraordinary reasons involving the safety of the state) the judicial claim would ultimately prevail, and the conflict would be embarrassing and humiliating for the executive. The proper course appears to be not to seek statutory powers to resist the High Courts but to define clearly the conditions under which the executive authority proposes to allow interviews to take place, so that they may be understood by the High Courts and the parties concerned. It would then, I think, be only very rarely, and for particularly cogent reasons, that a High Court would attempt to give directions not in accord with such conditions. In short, we should try to canalize, not to obstruct, the powers of the High Courts. This could be done by providing for such matters as are indicated in paras 2(1), (2), (4) and (5) of Sir Richard Tottenham's note of the 18th May;¹ and the possibilities of doing this sufficiently effectively under rule 26(5) as suggested above may deserve further examination.

L.J.D. Wakely, 11-6-43

2. As regards Defence Department's comments contained in Mr Wakely's note of 11-6-43 on the limited proposals put forward by us, do Legislative Department agree that even if recourse is had to Rule 28, with the result that the orders made under that rule will attract section 3 of the Defence of India Act, the High Court will be able on a habeas corpus application to issue directions contrary to the orders passed under Rule 28? Apart from the legal side of it, I would see some advantage in issuing an order under Defence Rule 28, even though there be the possibility of the High Court issuing contrary directions. We must assume that ordinarily the High Court would not upset reasonable orders issued by us.

V. Sahay, 24-6-43

7. With regard to paragraphs 2 and 3 of Mr Sahay's note, I am in general agreement with paragraphs 2 to 4 of Mr Wakely's note dated the 11th June. Interviews between detenus and Counsel otherwise than at the instance of the Court are under the complete control of the Executive and I do not see that any purpose would be served by an order under rule 28 vis-a-vis such interviews. If, on the other hand, orders were made with the ostensible effect of empowering the authority having custody of the detenu to disregard a direction by the High Court regarding an interview between the detenu and Counsel, I have no doubt that in one way or another the court would hold the order to be ineffective and I can conceive nothing more calculated to antagonize judicial feeling than the making of such order. I have always ventured to doubt whether there is any real ground for the uneasiness which this question has evoked and I venture to inquire whether there has been any case in which a High Court directing reasonable facilities to be afforded has failed to leave the question of reasonable safeguards to the Executive authority as in paragraph 51 of Bose J.'s judgement in the C.P. case and whether all executive requirements are not met if the question of safeguard is so left to the executive authority.

G. Spence, 25-6-43

H.M. last [saw] the file on 17-5-43 at p. 52 of the notes]

2. H.M. may see Punjab Government's letter dated the 21st June 1943⁴ and paragraph 1 and 2 of Sir George Spence's note above on the question of the amendment of section 491 of the Criminal Procedure Code or of section 16 of the Defence of India Act to oust the jurisdiction of the High Court in relation to detenus. I see from today's paper that the Punjab High Court have dismissed Caveeshar's petition and that they allowed the proceedings to be held in camera. It seems to me that we had better leave alone the question of the ousting of the High Court's jurisdiction in habeas corpus application on behalf of detenus for the present.

2. There remain the two points which H.M. desired pursued. The view of the Defence Department and the Legislative Department is that it is unnecessary to pass an order under rule 28 to secure the object as a direction from the High Court overriding the provisions of the order could not be disobeyed, and that the purpose would be equally served by rules framed under rule 26(5) of the Defence of India Rules. This may be accepted and in that case all that is to be done is to see whether the provincial security prisoners' detention rules and our own rules include provisions on the lines of paragraphs 2(1), (2), (4) and (5) of Sir Richard Tottenham's note dated 18-5-43.⁵ His third rule would obviously be futile if the High Court has to have the overriding power to determine the number of interviews. The Punjab High Court appear to have been quite reasonable in the Caveeshar case, and I think expediency requires that we should not attempt to challenge the right of the High Court to order reasonable facilities being given to detenus in this matter.

3. As regards the second point about the provision set out in Mr Bartley's note dated the 16th January, it is to be noticed that in the Caveeshar case we got the opportunity of arguing against the application for production before the order was made and so far as I know there has been no trouble on this score with other High Courts, and my own inclination would be to drop action on this point.

V. Sahay
25.6.43

I accept the above Conclusions.

R.M. Maxwell
27.6.43

1, 2, 3 and 5. Refer to the earlier part of these official comments - not printed.

4. Not printed.



36: Government of Punjab to the Government of India (interrogations)

File No. 44/2/43 - Home Poll (I)

[NAI]

Express Letter

From
Punjab, Simla

To
The Additional Secretary,
to the Government of India,
Home Department, New Delhi

No. S-701 BDSB

dated Simla E., the 14th June, 1943

Subject: Interrogation of persons detained under rule 129, Defence of India Rules.

Reference: Your express letter No. 44/2/43 - Poll (I), dated May the 25th, 1943.¹

The value of special interrogation centres and specially selected and trained interrogating staff has been realized in the Punjab for some years, and a part of the Fort at Lahore has been set aside for the interrogation of political suspects in police custody. The value of interrogations as a means to unravelling conspiracies against the State and in connection with subversive activities has been proved on many occasions, the most important of which is perhaps the 'Bose Conspiracy', the Intelligence Bureau note on which has no doubt been studied by the Home Department. Practically all the information in this note was obtained by interrogation. It is, however, necessary to emphasise that it is undesirable to set any time-limit to interrogations and that, therefore, there should be no hesitation in extending the detention of suspects detained under rule 129 by an order under rule 26 to admit of their further interrogation if they do not make complete statements within the period of 2 months allowed by rule 129. Interrogation involves a study of psychology, and the best results are obtained by applying the principles of psychology and not by maltreatment. It may, therefore, take weeks or even months before a suspect makes a complete statement. The information on which the note on the 'Bose Conspiracy' is based took months to extract and could not have been obtained if the detention of the conspirators had been circumscribed by an arbitrary time-limit. Interrogation as an aid to intelligence is nothing new. It is relevant to recall the methods by which Sir William Sleeman exposed the Thags in India, namely, by the interrogation of known suspects in special interrogation camps. The knowledge acquired by such interrogations enabled him to build up a system of intelligence which eventually led to the suppression of Thagi in India. Again, in more recent times, the Nazi Spy Conspiracy in America, before America came into the war, was exposed by the interrogation of a group of Nazi agents whose disclosures provided much unknown and unsuspected information. In Delhi, the underground Congress movement remained largely unknown, thereby infecting the rest of India, until the interrogation of those

who were known to be connected with it revealed their secrets. Had there been proper interrogation centres and trained and selected interrogating staffs in the provinces mainly affected by the Congress rebellion, it should have been possible by skilful interrogation of some of the ringleaders to have exposed the organisation and training behind the rebellion and to have established whether there was any Congress Axis contact. The uncertainty regarding a Congress-Axis connection and responsibility for Axis sabotage may be contrasted with the complete disclosure of the 'Bose Conspiracy' which was uncovered by interrogations.

F.A. Bourne

Chief Secretary to Govt. of Punjab.

1. Doc. 54 in Chapter I – Sect. B.

37. Government of Madras to the Government of India (interrogation of persons in custody)

File No. 44/2/43 – Home Poll (I)
[NAI]

Government of Madras
Public Department

No. S/1375-2/43.

Dated, 16th June 1943.

From G.W. Priestley Esq., C.I.F., I.C.S.,
Chief Secretary to the Government of Madras,
Fort St George, Madras.

To The Additional Secretary to the Government of India,
Home Department, New Delhi.

Sir,

Interrogation of persons detained under Defence of India Rule 129 – Ref. Home Department's letter No. 44/2/43 – Poll (I) dated 25th May 1943.¹

I am directed to say that the practice in force in this Province is that persons arrested under Rule 129 are committed to custody (i) in the Presidency Town of Madras, in the Penitentiary; and (ii) elsewhere in the Province of Madras, in the subsidiary jail or where there is no subsidiary jail, in the District or Central Jail concerned. In exceptional cases the police have been authorized to detain a person arrested under Rule 129 in police custody for a period not exceeding 7 days by order in writing of police officers of and above the rank of Deputy Commissioner in the Presidency Town of Madras or District Superintendent of police elsewhere. The Government of Madras are now considering a proposal to extend this by 15 days. Individuals who have been arrested under this Rule are interrogated locally by the Special branch, C.I.D. Officers. In the Special Branch, there are a number of officers who have had considerable experience of interrogation and no special additional arrangements are

considered necessary at the moment in this Province as regards staff. Local people are kept in Police custody in various suitable local centres and they are interrogated by the Special branch Officers deputed for the purpose. But it may be noted that in this Province the C.I.D. have not so far had to handle any really important Congress or Socialist leaders of All India importance. Special arrangements will be necessary for such persons.

2. I am also to say that the Government of Madras agree with the Government of India's statement that satisfactory interrogation is impossible when a suspect is kept in a jail, and that the question of where an interrogation centre can suitably be set up in Madras City is being investigated by the C.I.D. This would also solve the difficulty of interrogation of such important persons as those referred to at the end of paragraph 1 above.

Your obedient servant,

For Chief Secretary to Government.

1. Doc. 54 in Chapter I in Sect. B.

38. District Judge, Assam, quashes a conviction in an appeal from Sylhet — (Congress flag hoisting permitted)

File No. 3/68/43 – Home Poll (I)
[NAI]

Heading of Judgement of Appellate Court

Court of Sessions, Appellate Jurisdiction

The 21st June, 1943.

Sylhet Criminal Appeal No. 57/2 of 1943.

Appeal from the order of S.N. Maitra, Esq., I.C.S., Addl. District Magistrate, of Sylhet dated 19.4.1943 in C.R. Case No. 412 of 1943.

Nirendra Nath Deb . . . Accused Appellant.

For the Appellant: Babu Kiranendu Syam, Pleader.

For the Crown: Khan Bahadur Abdur Rahim Choudhuri, P.P.

Judgment

This is an appeal against the conviction of the appellant under Rule 38(5) of the Defence of India Rules for having done a Prejudicial act within the meaning of Rule 34(6) (K) of the Rules in contravention of Rule 38(1).

The undisputed facts available from the evidence are as follows: The appellant was found hoisting a tri-coloured flag usually known as the congress flag in a public ground on the *26th of January last*, which is observed by the congress as 'Independence Day', at about 9 a.m. There is no evidence to show that any member of the public was present at such hoisting

excepting the four persons who were sent up for trial on the charge. There was no gathering near the flag or near about and no speech was made or slogans uttered.

The learned Magistrate observed that the Sylhet District Congress Committee was declared an unlawful association but this was admittedly not under the Defence of India Rules or for any action which came within the meaning of 'prejudicial' under the Rules. There is nothing to show that the hoisting of the flag has any connection with the District association declared unlawful. The action of the appellant itself has therefore to be judged independently. Assuming that the intention of the appellant was 'to win support for and strengthen the hold of congress', can this be said to be an act 'to influence the conduct or attitude of the public or of any section of the public in manner likely to be prejudicial to the defence of British India or to the efficient prosecution of the war' simply because 'the Policy of the congress is not helpful to the defence of British India or to the efficient prosecution of the war', as has been observed by the learned Magistrate? I doubt if a positive answer follows beyond reasonable doubt. The congress flag itself or the hoisting of such a flag is not said to have been banned. Such hoisting in a vacant place in the absence of any gathering or even looker-on and unaccompanied by any speech or ceremony or demonstration or any other objectionable procedure, which might directly help or encourage any activity against the defence of India or the efficient prosecution of the war, is, in my opinion, too far-fetched for being construed as 'prejudicial' to attract the operation of Rule 38(5) of the Rules. After a careful consideration of the matter, therefore, I am of the opinion that the conviction and sentence of the appellant cannot stand. The appeal is, under the circumstances, allowed and the conviction and sentence set aside.

N.N. Sen Gupta,

Addl. Sessions Judge.

21-6-43.

39: Government of Central Provinces and Berar to the Government of India (reg. interrogation)

File No. 44/2/43 – Home Poll (I)

[NAI]

Government of the Central Province and Berar,
Political and Military Department

Express Letter

From T.C.S. Jayaratnam, Esquire, C.I.E., I.C.S.,
Secretary to Government, C.P. & Berar

To Home New Delhi.

Dated Pachmarhi, the 22nd June 1943.

Subject: Interrogation of persons detained under Defence of India Rule 129.

Reference Sir Richard Tottenham's express letter No. 44/2/43 – Poll (I), dated 25th May 1943.

By a notification dated 22nd November 1940, the Provincial Government specified jail custody for Defence of India Rule 129 prisoners. The same custody was specified in an amending notification issued on 7th May 1942. This Government considers that no new procedure is necessary at this stage when conditions are particularly quiet, arrests under Defence of India Rule 129 are few and far between and the need for interrogation by a qualified and expert staff is no longer apparent. Should circumstances arise which threaten a revival of disorders, the Provincial Government would consider amending its existing orders so as to provide for detention in Police custody in special cases. It seems doubtful, however, whether 'specially selected and trained interrogating staff' can be made available other than the normal police staff at district headquarters. Moreover, interrogation is certainly not necessary in all cases because Defence Rule 129 has been used with advantage in this province mainly for preventive purposes, especially the segregation for short periods of hot-heads to whom it is desirable to allow time to cool off.

(T.C.S. Jayaratnam)

Secretary to Government,
Central Provinces and Berar,
Political and Military Department.

1 Doc. 54 in Chapter I - Sect. B.

40 Government of Bihar to the Government of India (reg. interrogation)

File No. 44/2/43 - Home Poll (I)
[NAI]

No. 1873 C.W. 1 (19)/43.

Government of Bihar.
Political Department.
(Special Section).

From
J.W. Houlton, Esqr., C.I.E., I.C.S.,
Chief Secretary to Government.

To
The Additional Secretary to the Government of India,
Home Department, New Delhi.

Ranchi, the 23rd June 1943.

Subject: Interrogation of persons detained under the Defence of India Rule 129.

Sir,

I am directed to refer to your Express letter No. 44/2/43 - Poll (I) dated the 25th May, 1943¹ on the above subject. In reply I am to say that in order to provide facilities for interrogating

persons arrested under rule 129 of the Defence of India Rules, the Provincial Government in their notification No. 502CW-1(19)/43 dated the 15th February 1943 (copy enclosed)² have specified jail custody or police custody as the custody to which persons arrested under this rule should be committed. They at the same time issued instructions to their local officers that (i) Police custody should not ordinarily be treated as the custody to which such persons should be committed and direct that they should be committed to Police custody only when the District Magistrate concerned, the Deputy Inspector General of Police, Criminal Investigation Department or his Special Assistant considers it necessary or desirable for the purpose of providing facilities for interrogation and so directs the persons making the arrest. (ii) Such detention should as far as possible be at the Police stations. (iii) The period of such detention should not exceed 15 days unless the Provincial Government passes an order extending the period.

The above arrangements are in the opinion of the Provincial Government adequate for serving the purpose in view and the necessity for the entertainment of a special staff and fixing up special interrogating centres has not yet been felt in this Province.

I have the honour to be,

Sir,

Your most obedient servant,
Chief Secretary to Government.

1 Doc. 54 in Chapter I - Sect. B.

2 Not printed.

41. Governor of Bihar to the Viceroy (law and order situation and the effects of judgements)

Linlithgow Collection
[NAI Acc. No. 2385]

From H.E. Sir Thomas Rutherford, K.C.S.I., C.I.E., Governor of Bihar.

[Secret.]

June 23rd, 1943.

No. 455-G.B.

Dear Lord Linlithgow,

I have not very much to add in the way of amplification or comment to the Chief Secretary's report, Copy of which is attached.¹

I am looking into the reason why nothing was done on the Santal Parganas Deputy Commissioner's appeal for seed paddy, sent in January, until it was brought to my notice by him and representatives of the Santals in June.

2. I see Twynam has commented on the results of the recent Calcutta High Court's findings on the law and order position: the debacle in this Province will probably be even worse. As you know, many cases arising out of the August rebellion and the subsequent wave of disorder were still under trial by special magistrates and judges; the necessary *retrials ab initio* and the probable flood of appeals in decided cases will give a set-back to the arrangements I had set

going for a concerted attack by all courts on the disturbing pendency of cases and consequent long detention in jail of undertrials. The bottleneck however is the wretched investigating officer who, besides trying to attend a number of courts to give evidence and instruct the prosecutor, has also to attend to the current crime of his station. Sanction has been given for the recruitment of a large number of sub-inspectors and assistant sub-inspectors in accordance with the programme of Police reorganization, but they will not be available for duty after their training till nearly a year has elapsed. I have told the Inspector-General of Police to order his Superintendents to empower as many of the existing assistant sub-inspectors in the thanas, as can reasonably be trusted to investigate cases and that they (the Superintendents) should 'shroff' all pending charge sheets and order the withdrawal of cases wherever there is doubt of securing a conviction. Many of the charge sheets have, I suspect, been rather wholesale and supported by what in the eyes of the courts may be insufficient evidence.

3. The Chief Secretary informs me that there are about 45 applications arising out of the Calcutta and Federal Court judgments filed in the Patna High Court which will be heard during the vacation by the two most junior Judges, namely, Brough and Sinha. I am not very confident about the results. These two judges on a reference from the Judicial Commissioner, Chota Nagpur, have upheld an obviously illegal order under section 562, Cr. P.C., on the ground that, '*leaving aside the legal position*, the decision of the learned magistrate seems to have been dictated by sound and sensible considerations'. I enclose a copy of the High Court's order and Judicial Commissioner's reference from which it will appear that the accused were not only in possession of a wire-cutter but a bottle of inflammable mixture for causing arson, and that one of the accused tried to stab a constable.

6. This Hanumannagar affair in Nepal is a most unfortunate affair as it now seems almost certain that Jai Prakash Narayan was one of the prisoners rescued. Our police only got wind of it 5 days late in circumstances which have been stated in a letter from Lacy to Hassan of the External Affairs Department and so far they have not been able to trace any of the attacking gang, if any have come back over the border. In that letter the External Affairs Department have been asked whether they would concur in Betham being asked to sound the Maharaja on a proposal to allow a party of our Gurkha Military Police into the area where Jai Prakash is now believed to be to assist the local authority.

7. Many thanks for Your Excellency's telegram received today agreeing to my revised proposals for abolition of prohibition.

Yours sincerely,

T.G. Rutherford

Enclosure

[40 (6)-g.g.-43.]

Criminal Reference No. 8 of 1943.

Made by D.E. Reuben, Esq., I.C.S., Judicial Commissioner of Chota Nagpur in his letter No. 1630, dated the 28th March 1943.

In the matter of Lachminarain Sahu, Ramyad Sahu, Madan Kumar Chaube and Sambhunath Tewari (Accused) *versus* The King-Emperor.

Through the Public Prosecutor, Ranchi.

For the accused: Messrs Baldeo Sahey and Akhauri Badri Narayan.

For the Crown: Mr Harinandan Singh for Assistant Government Advocate.

Before: The Hon'ble Mr Justice Brough.
The Hon'ble Mr Justice Sinha.

Brough, J. – This is a reference by the learned Judicial Commissioner of Chota Nagpur under Section 438 of the Code of Criminal Procedure and under Section 439 the accused showed cause why the conviction should not be set aside.

The facts of the case are that Lachminarayan Sahu, Ramyad Sahu, Madan Kumar Chaube and Sambhunath Tewari were arrested at about 10 p.m. on the 12th December 1942 at Argorah railway station; which is the next station to Ranchi, in suspicious circumstances. Sambhunath Tewari had in his possession a pair of wire-cutters, and three torches were also seized from the accused. They were charged that they on or about the 11th of December 1942 had gone to the Argorah railway station to cut the telegraph wires and remove the railway line and thereby committed an offence punishable under Section 35 (1) (4) of the Defence of India Rules and in answer to the questions put to them under Section 364 of the Code of Criminal Procedure which was – ‘Did you on the 11th December 1942 go over to cut wire at the Argorah station’ – all the accused replied ‘Yes, Sir. I may be pardoned. I won't do such thing in future’. The prosecution called some witnesses who were not cross-examined. They called the Inspector of Police who made the arrest. He stated that about 10 p.m. he saw the four accused on the eastern side of the Argorah railway station platform. They were all flashing torch light in the upward direction, he arrested them and discovered among other things the items to which I have made reference. The Station Master also gave evidence to say that ‘on the 11th December 1942, they (that is the accused) came to my station at 9 p.m. They flashed their torch light’. In those circumstances the learned Magistrate found them guilty under Rule 35 (1) (4) of the Defence of India Rules and ordered them to be released under Section 562 (1) on a probation of good conduct for one year on their executing a bond of Rs 200 each with surety of the like amount. Lachminarain Sahu, Ramyad and Sabhunath Tewari executed bonds and obtained sureties, but Madan Kumar Chaube did not execute a bond or obtain a surety and was committed to prison and his case is not before this court. The learned Judicial Commissioner on reviewing the record of the case took the point that the offence under Rule 35 of the Defence of India Rules, that is to say, doing an act with intent to impair the efficiency or impede the working of, or to cause damage to any telegraph line or post as defined in the Telegraph Act, 1885, was punishable under Clause (5) of Ordinance III of 1942 with death and was therefore not an offence in respect of which the Magistrate was empowered to ask for surety under Section 562 of the Code of Criminal Procedure. He also pointed out that in fact the accused had not committed an offence directly under Rule 35 (1) of the Defence of India Rules, but that what they had done was deemed to be an offence under that rule by virtue of Rule 121 which says ‘any person who does any act preparatory to, a contravention of, any of the provisions of these rules shall be deemed to have contravened that provision’. I think that is clear that the admission of the accused that they intended to cut wires coupled with the proof of the fact that four of them proceeded together at night to a railway station where there were telegraph wires, one of them being equipped with a wire-cutter, constitutes the doing of an act preparatory to an offence under Rule 35 (1) of the Defence of India Rules. At first sight it appeared that section 5 of Ordinance III of 1942 did not, therefore apply

because that Ordinance was passed after the Defence of India Rules and Section 5 in terms only applied to persons who had contravened Rule 35 and did not extend to persons who were deemed to have contravened that rule. But it appears that that point had occurred to the Government of India and in June 1942 they passed another Ordinance-Ordinance XXIX of 1942-which amended Section 5 of Ordinance III by the addition of the words 'contravenes or is deemed to have contravened'. It is therefore clear that an offence under Rule 121 of the Defence of India Rules read with Rule 35 is punishable with death and therefore in my judgment Section 562 of the Code of Criminal Procedure did not apply to the offence. The learned Magistrate in answer to the Judicial Commissioner set out the reasons which induced him to act as he did and those reasons commend themselves to me very much. He says — 'The accused persons who are admittedly impressionable youth all along pleaded for mercy and undertook not to engage themselves in any anti-Government or subversive movement. The object of punishment is reformatory and not punitive. I find that persons convicted in connection with the civil disturbance movement are being released from jail on executing bonds of good behaviour. I thought that the accused persons might be useful citizens of the Empire and that jail life would have had bad effect on their morale. In these circumstances I thought it expedient to use the provisions of Section 562 (1), Criminal Procedure Code'.

Leaving aside the legal position, as I say, the decision of the learned Magistrate seems to me to be dictated by sound and sensible considerations, and if his view was right, as I think it was right, at the time of the trial, it is even more right at the present time. These boys who are aged 18 and 19 have been at liberty on sureties for good behaviour for six months and no suggestion has been made that they have not been keeping their undertaking. I cannot but feel that irrespective of any view I might have taken if I had been trying the case, that any attempt now to impose any punishment on these boys would only have a bad effect. Therefore, although I agree with the view of the learned Judicial Commissioner that the order made by the Magistrate was one which in the circumstances he ought not to have made and had no jurisdiction to make, yet in my view the interests of justice are best served by this Court declaring to interfere in anyway with the order that has been passed.

Peter H.L. Brough.

Sinha, J. — I agree to the order proposed by my learned brother.

B.P. Sinha.

Patna High Court, the 25th May 1943.

S.G.

3rd June 1943.

No. 2961.

Copy forwarded to the Deputy Commissioner, Ranchi, for information, necessary action and communication to the Magistrate concerned.

R.B. Beevor,
Judicial Commissioner

1. Not printed.



42: Government of Bengal to all District Officers

Govt. of Bengal (Home) File No. W511/43
[Bengal State Archives]

Government of Bengal.
Home Department.
Defence.

Memorandum

No. 513 (60) D.S.

Calcutta, the 26th June 1943.

To

All, District Officers in Bengal

(with spare copies for Subdivisional Officers) (Except Deputy Commissioner, Chittagong Hill Tracts) Commissioner of Police, Calcutta.

All Commissioners of Divisions.

All Superintendents of Police (with spare copies for Subdivisional Police Officers).

Subject: *Withdrawal of powers delegated to local officers under the Defence of India Rule 26.*

In view of the recent judicial decisions Government are advised that powers under Defence of India Rule 26 should not be exercised until the provisions thereof are revalidated or re-enacted. It has therefore been decided to cancel the notification delegating powers to local officers under the aforesaid rule and a notification to this effect has been published in the *Calcutta Gazette Extra-ordinary*, dated the 25th June 1943 (Copy enclosed).¹ You are accordingly requested to refrain forthwith from exercising your powers under the provisions of Defence of India Rule 26, until the receipt of further directions from Government in this matter.

It may be noted that all orders hitherto passed by local officers under rule 26 of the Defence of India Rules are to remain unaffected by the revocation of the powers delegated to them.

A.E. Porter,

Additional Secretary to the Government of Bengal.

No. 513/1 (4) D.S.

Copy forwarded for information to the Inspector-General of Police, Intelligence Branch, Criminal Investigation Department, Bengal.

Secretary, Board of Revenue, Bengal.
Secretary to the Governor of Bengal.

A.E. Porter,

Additional Secretary to the Government of Bengal.

1. Not printed.

43: Commissioner of Police, Bengal to the Addl. Secretary, Govt. of Bengal

Govt. of Bengal (Home) File No. W502/43
[Bengal State Archives]

Confidential.

Office of the Commissioner of Police,
Special Branch 14, Lord Sinha Road, Calcutta.

Dated the 26-6-43.

No. 27689

CM 579/43(B) II.

From

C.E.S. Fairweather, Esq., C.I.E., I.P., J.P.,
Commissioner of Police, Calcutta.

To

The Additional Secretary to the Government of Bengal,
Home Department.

Sir,

In accordance with the Provisions of Rule 129 Clause 2 of the Rules framed under the Defence of India Act, 1939, I have the honour to report that acting under the powers vested in under Rule 129 (1) (a) Babu Hari Sadhan Sen (aged 22 years) son of Saroda Kumar Sen of village Quepara, P.S. Raozan, District Chittagong and of 99, Bondel Road, Calcutta, was arrested and committed to the Presidency Jail on 25-6-43.

I request that the Government be pleased to issue order under Rule 26(1) of the Defence of India Rules for his further detention in jail. His History sheet is being submitted to Government by the Deputy Inspector-General of Police, C.I.D., Intelligence Branch, Bengal.

The Government Order may be issued before the 8th July 1943.

I have the honour to be,
Sir,
our most obedient servant,

For Commissioner of Police.
Calcutta.



44: Police firing at Dhakiajuli (Assam)

File No. 3/61/43 – Home Poll (I)
[NAI]

D.O. No. 6848 – C

dt 6-7-43

My dear Vishnu Sahay,

In continuation of my D.O. No. 6587–C of the 28th June,¹ I write to inform you that we are also asking the High Court to expunge certain objectionable portions of the judgment.²

Yours Sincerely,
Chief Secretary,
Govt. of Assam

Vishnu Sahay, Esqr., I.C.S.,
Deputy Secretary to the Government of India
Home Department.

1 See Doc. 53 in Chapter II.

2 See Doc. 4 for Judgement on Police Firing at Dhakiajuli.

45: Sushil Kumar Bose – Accused (Petitioner) v. Emperor [Derbyshire C.J., Khundkar and Sen J.J. Special Bench] (12 July 1943)

AIR, Vol. 30, 1943, Calcutta, pp. 489–511

Misc. Case No. 65 of 1943, Decided on 12th July 1943.
[Law Institute – New Delhi]

Sen J. – This is an application by Sushil Kumar Bose convicted and sentenced by a Special Court established by the Special Courts Ordinance, 2 of 1942, invoking the powers given to us by S.491, Criminal P.C. The application is based on the ground that ordinance 2 is ultra vires of the Governor-General's ordinance making powers. The Crown meets the application by placing reliance on ordinance 19 of 1943 which has repealed Ordinance 2 and made certain provisions with respect to the rights of persons sentenced under Ordinance 2 the contention is that this new Ordinance will govern these proceedings. On behalf of the petitioner it is argued that this Ordinance is ultra vires the powers of the Governor-General. It will now be necessary to relate certain facts regarding Ordinance 2 of 1942. This Ordinance provided for the constitution of 3 classes of Courts of criminal jurisdiction viz., Special Judges, Special Magistrates and Summary Courts. The jurisdiction of each Court was not defined but it was

provided that each Court would try only such cases as the Provincial Government or a servant of the Crown empowered by the Provincial Government in that behalf may by general or special order in writing direct.

The validity of this Ordinance was questioned before us in the case of Emperor V. Benori Lall Sarma. The Chief Justice and Khundkar J., held that Ss.5, 10 and 16 of the Ordinance were ultra vires the powers of the Governor-General and that consequently the Special Courts were not legally vested with Jurisdiction to try cases. I held the view that not only were those sections invalid on the grounds stated by the Chief Justice and Khundkar J., but that the entire Ordinance was ultra vires the powers of the Governor-General inasmuch as the Ordinance showed on the face of it, that, in the opinion of the Governor-General and emergency necessitating the Ordinance had not arisen at the time the Ordinance was promulgated and also on the ground that the Governor-General had delegated to the Provincial Government the function of deciding whether or not an emergency requiring the application of the Ordinance had arisen. The unanimous opinion of the Court was that the special Courts had no jurisdiction to try the petitioner and we set aside the convictions and sentences and directed the release and retrial of the petitioners according to law.

An appeal from our decision was taken to the Federal Court by the Crown. The majority of the Federal Court, Rowland J. dissenting, dismissed the appeal. They held the view that unless Ss.28 and 29, Criminal P.C., were repealed, the special Courts of the Ordinance would have no jurisdiction to try cases. They held further that, notwithstanding drafting devices, the Ordinance by itself had not repealed these sections, but that it was the executive order to be passed under Ss.5, 10 and 16 of the Ordinance in respect of each case or group of cases that would, in fact, operate to repeal these provisions of the Code, to divest the regular Courts of their jurisdiction and to invest the special Courts with jurisdiction to try any case or group of cases. They added 'We are of opinion that such executive orders cannot in law have any such effect'. They also held the view that the powers of the High Court though in form taken away by S 26 of the Ordinance were, in fact, taken away only when an executive order was passed under Ss.5, 10 or 16. Their Lordship's view was that the powers of the High Court could be taken away only by a Legislature. Lastly, they took the view that the Governor-General had, by the provisions of Ss.5, 10 and 16 of the Ordinance delegated his legislative powers to the executive in a manner which amounted to an application of his legislative powers and that the Constitution Act did not empower him to do such a thing. In the result, they found that the Special Courts had no jurisdiction to try the respondents. Rowland J., rejected the unanimous opinion of this Court and also the view that I alone held, viz., that the whole of Ordinance 2 was ultra vires as the Ordinance, on the face of it, showed that the Governor-General was of opinion that an emergency requiring the Ordinance had not arisen at the time the Ordinance was promulgated. He has expressed disagreement with my view in language which I cannot hope to emulate. He describes His Excellency the Viceroy sitting in his special train and hearing the wheels humming 'Emergency, Emergency', and then 'no Emergency yet, no Emergency yet'. Then he goes on to say:

I am not speaking in a spirit of levity. I am very much in earnest but so strong is my dissent from of the line of argument I am examining the without some safety valve I could hardly restrain myself from commenting on it with under warmth.

A little later his Lordship observes:

Do I dream? Am I in wonder land? Have we met in the person of the learned judgment what Lord

Atkin might call a new Humpty-Dumpty? How much over time are the words to earn by meaning what the learned Judge says? For it seems to me that the boot is on the other foot.

I believe there is a sound rule that metaphors like strong drinks should never be mixed. Such mixtures lead only to confused thinking, I must confess that the mixture of Viceregal trains, dreams and boots is too potent for my assimilation. Is it my judgment that is solely responsible for making his Lordship feel once like an over-heated locomotive with an inadequate safety valve drawing the Viceregal special train and then like innocent Alice, wondering at thing she cannot understand? I may have thought it was, were it not for the fact that the other two learned Judges, who were trained in the profession of law reacted differently from Rowland J., who, in the words used by Turner L.J. of the Judicial Committee in the *Sivagunga* case, is 'an unprofessional Judge', 9 M.I.A. 539 at p. 601 Their Lordships, the Chief Justice of India and Zafrulla Khan J. after setting out in great detail the arguments on the points concluded:

The contentions put forward on behalf of the respondents in this part of the case found favour with Sen J. in the Court below and they undoubtedly rise substantial questions. In view, however, of the conclusions at which we have arrived on the main ground of attack against the validity of the Ordinance we do not consider necessary to pronounce an opinion on these questions.

Having introduced the technique of likening Judges whose opinion differ from his to characters in fiction, Rowland J., will, I am sure, not take it amiss if I say that his manner of criticism of points of law which he does not appreciate makes me wonder whether in him we have not a re-incarnation of that well-known character in fiction – Bumble the beadle – who, dis-liking an interpretation of the law exclaimed: 'The law is an – ass' idiot' (*Oliver Twist*, Chapter 41).

Rowland J.'s judgment cannot, of course, have any authoritative value, it may have a persuasive value. I am however not persuaded. I shall therefore deal with the new Ordinance from the same standpoint as that which I took when examining the repealed Ordinance 2 of 1942 and even at the risk of again disturbing his Lordship's composure I shall try and avoid that attitude which Lord Atkin deprecates in the very case from which Rowland J., sought to draw inspiration. I refer to the observations of Lord Atkin, which probably escaped the notice of Rowland J. They are as follows:

I view with apprehension the attitude of Judge who on a mere question of construction when face to face with claims involving the liberty of the subject show themselves more executive minded than the executive: 1942 A.C. 206 at p. 244.

The new Ordinance avoids some of the defects of the one it repeals. There is nothing, on the face of it, to show that the Governor-General was of opinion that an emergency necessitating the measure had not arisen at the time of its promulgation. It comes into force at once, there is no delegation of the function to decide whether an emergency exists, there is no delegation of legislative powers to the executive nor is there any abdication of legislative powers, nevertheless, in my opinion, one of its sections, viz., S.3, is tainted with, what I may term, the original sin of the old Ordinance and is therefore *ultra vires*. What does the new Ordinance purport to do? Section 2 repeals ordinance 2 of 1942. Section 3 (1) gives effect to and continues in effect every sentence passed by a special Judge, special Magistrate or summary Court constituted by the repealed Ordinance and seeks to transform it into a sentence passed at a trial held in accordance with the provisions of the Criminal procedure Code by either a Session Judge, an Assistant Session judge or a Magistrate of the First Class respectively. Sub-section

(2) subjects the sentences so confirmed to such rights of appeal or revision as they would have been subjected to if they have been passed at trials held in accordance with the provisions of the Criminal Procedure Code by the above mentioned Courts from the date of new Ordinance. Sub-section (3) is immaterial for the purposes of this case.

The argument of the learned Advocate-General is this: 3 is ultra vires because it deals with a subject which is within one or other of the lists of subjects with which the Governor-General may deal by Ordinance. The contention on behalf of the petitioner is that although the Ordinance purports to deal with such a subject it is really validating that portion of Ordinance 2 which has been declared to be ultra vires by the Federal Court. Mr Sadhan Gupta put the point with great succinctness and clarity thus: Every sentence passed under the old Ordinance has been validated by Ordinance 19. There cannot be a valid sentence without a valid conviction, there cannot be a valid conviction without a valid trial, there cannot be a valid trial unless there was a proper Court and there cannot be a proper Court unless it has jurisdiction validly conferred upon it. By validating the sentences passed by the Courts constituted under Ordinance 2, the new Ordinance validates the jurisdiction given, to those Courts by Ss.5, 10 and 16 of Ordinance 2. The Federal Court having held that the Governor-General as a Legislature had no power to confer jurisdiction in the special Courts in the manner in which he had tried to confer it by the above-mentioned sections, it is not open to the Governor-General as a subordinate Legislature to enact either directly or indirectly that jurisdiction was good.

In examining these arguments there is one thing which we must always remember and it is this: There is a fundamental difference between a Sovereign and a subordinate Legislature. No Court can question the validity of a law made by a Sovereign Legislature like Parliament inasmuch as it has unfettered legislative powers. Bodies or persons given legislative powers by Parliament are in a different position they are subordinate or non-sovereign legislatures and as such their Acts may be adjudicated upon by Courts which, in a proper case, may declare them to be ultra vires. The Governor-General as ordinance-maker is such a subordinate legislature. He derives his legislative powers from the Government of India Act of 1935. Now a subordinate or non-sovereign Legislature has definite limits upon its law making powers. It can legislate only within the ambit of the powers which are conferred upon it by the enactment which creates it. Any law which it passes outside this ambit is ultra vires. It follows from this that a non-sovereign legislature which has made a law which is ultra vires of itself cannot by a subsequent act declare such law or any part thereof to be intra vires. To permit this would be to permit a Legislature with powers limited by some other authority to enlarge its powers by its new act without reference to the authority creating it. Now, if this cannot be done directly, obviously, it cannot be done indirectly by means of drafting or other devices. If authority is needed for this proposition I would refer to the case in 1899 A.C. 626 at p. 627 and to the case in 1940 A.C. 513 at pp. 533 and 534. These principles are obvious and simple but their application in particular cases has not always been easy, owing to the difficulty of determining whether a piece of legislation, which purports or appears to do something within the powers of the Legislature, is really doing something which is outside such powers.

Now let us test the validity of the present Ordinance by the application of this principle. On the face of it, the Ordinance appears to be Legislating with respect to a subject regarding which the Governor-General has the power to make an Ordinance. What this Court has to see is whether in the guise of Legislating with respect to this subject the Governor-General is, in fact extending his legislative powers beyond the prescribed limits. I shall examine the

question first from the standpoint that Ss.5, 10 and 16 only of Ordinance No. 2 of 1942 are *ultra vires* of the powers of the Governor-General. The Federal Court's decision put shortly is that the Governor-General had not the power by Ordinance to subject persons to trial by Courts which were given jurisdiction solely by executive order. Now let us see what S.3 (1) of the new Ordinance does. Let us suppose that the section stopped after the words 'shall have effect' it would then read thus:

Any sentence passed by a special judge, a special Magistrate or a summary Court in exercise of jurisdiction conferred or purported to have been conferred by the said Ordinance shall have effect.

Would such a provision be valid? The Governor-General had no power to make a law subjecting persons to be tried by Courts upon which jurisdiction was conferred by executive order only. The Governor-General however made such a law and the petitioner was subjected to trial by a Court upon whom jurisdiction was conferred in this manner. The Federal Court has declared that such a law was *ultra vires* and that trials and convictions held under such a law were illegal. The Governor-General thereupon makes another law repealing, it is true, the old law, but validating, sentences passed by the special Courts which had been given jurisdiction by the invalid law. Is not the Governor-General by this device really validating those very sections of Ordinance 2 of 1942 which were declared to be *ultra vires* by the Federal Court? Is he not trying to do indirectly what he could not do directly and thereby enlarging his powers beyond the limits prescribed by the Constitution Act? In my opinion he is doing so and my reasons are those stated by Mr Sadhan Gupta which I produced in the earlier part of the judgment. By validating the sentences the Governor-General is really validating the sections by which he conferred jurisdiction upon the special Courts sections which have been declared to be *ultra vires* by the Federal Court. To permit the Governor-General to do this would be to permit to ratification of an *ultra vires* act by a person guilty of it. This cannot be done. (Street on *Ultra vires*, p. 441). To my mind it is quite clear that if S.3 (1) stopped after the words 'shall have effect' it would be *ultra vires*.

Let us see whether the addition of the other words makes any difference. These words only mean this: although the sentence were passed by the special Courts of Ordinance 2 in accordance with the procedure laid down to be sentences passed in accordance Procedure by Courts constituted under that Code. What is being done? To use a homely metaphor, a new label is being put on the bottle containing the same old medicine. Nothing is being really changed, only a fiction is being introduced. The position therefore is not altered and section 3 (1) remains *ultra vires*.

We must next examine whether sub-section (2) of S.3 make any difference to the validity of the section. By this sub-section the sentences are made subject to certain rights of appeal and revision. The learned Advocate-General very frankly stated that the provision of this sub-section would have no effect on the validity of the section. If it was *ultra vires* without sub-section (2) it would remain *ultra vires* even after the addition of sub-section (2). This must be so. The sentences passed under the old ordinance were not invalid because they were not subject to the right of appeal and revision granted by sub-section (2). They were invalid because section 5, 10 and 16 of the old Ordinance were *ultra vires* and these sections were *ultra vires* because the Governor-General had in enacting them delegated his legislative powers to the point of abdication in favour of the executive and left it entirely to the executive to vest jurisdiction in special Courts by order. This defect is not removed by sub-section (2). Section 3, therefore, remains *ultra vires*.

True, the present Ordinance legislates, in form, with respect to a subject which lies within the ambit of the ordinance making power of the Governor-General, but in fact the ordinance is in the words of Street 'the satisfaction of an ultra vires Act by the party guilty of it'. By maintaining the sentences passed by ordinance 2 it seeks to obliterate or cover the illegality of Ordinance 2. The illegality of Ordinance 2 cannot be obliterated by clothing acts done thereunder with a fictional garb of legality nor can it be obliterated by giving the convicted persons a right of appeal or revision.

In my opinion the present Ordinance is nothing but an attempt to keep in force by legislative devices something which the Governor-General could not legally bring about.

After the decision of the Federal Court regarding Ordinance 2, we must hold that the Governor-General as Ordinance maker had no power to make a law which could subject the petitioners to the trials in which they have been sentenced. As such trials could not have been authorized by antecedent legislation they cannot be validated by a subsequent Ordinance. It follows that the sentences also cannot be validated. In these proceedings we are not concerned with Ss.4 and 5 of the Ordinance and I express no opinion regarding them. In my view, S.3 (1) is ultra vires the Governor-General's ordinance-making powers and the other sub-section of S.3 being consequential to sub-section (1) must fall with it. I shall now deal with the matter on the footing that the entire Ordinance 2 was ultra vires inasmuch as the Governor-General was not of opinion that an emergency requiring the Ordinance had arisen and also because he delegated his function of deciding whether an emergency existed to the Provincial Government. There is nothing in the decision of the majority of the Federal Court which discourages me from adhering to that view. In this aspect of the case also, S.3 of ordinance 19 could be ultra vires.

The position may be stated thus: There being in law no emergency the Governor-General had no power to make any Ordinance. Therefore he had no power to make any law subjecting the petitioner to be tried and convicted by the special Court of Ordinance 2. Nevertheless he made Ordinance 3 and the petitioner was subjected to trial, convicted and sentenced. Then he declares that an emergency had arisen and makes an Ordinance repealing the old Ordinance but validating the sentences passed under it. What is the Governor-General doing in effect? He is really validating Ordinance 2 which he had no power to promulgate by antedating the present emergency. By the employment of drafting devices he is taking powers which the law has not given him viz., the power to make an ordinance where in law no emergency exists.

My Lord the Chief Justice and my learned brother Kundkar have expressed the opinion that S.3 is not ultra vires: as I differ from them I feel that I should give my reasons for so doing.

If the intention of the Governor-General in enacting Ordinance 19 was to have all the convictions and sentences automatically quashed by the Courts he could very easily have said so. There was no need declare that the sentences should be deemed to have been passed in accordance with the Code of Criminal procedure nor was there any need to make elaborate provisions for appeal and revision. I may contrast the point of view held by me with that held by the majority of this Court as follows: I have held that S.3 is clothed in the garb of legality in order to effect something which is illegal, and therefore it is ultra vires. The view taken by My Lord the Chief Justice and my learned brother Khundkar is that S.3 may appear to be clothed in the garb of illegality but as it intends to effect something legal it is ultra vires. For the reasons above I respectfully differ the view taken by My Lord the Chief Justice and my learned brother Khundkar.

By the Court – We direct that the conviction in this case be set aside and that the applicant be released but that he be re-arrested and dealt with in the ordinary Courts according to the ordinary process of law. It will be for these in charge of this case to see that this person is re-arrested, brought before the Magistrate and dealt with. This direction is without prejudice to the powers of the prosecution under S.494, Criminal P.C. Certificate under section 205, Government of India Act, is granted in this case.

Order accordingly.

1 Only the judgement of Justice Sen has been reproduced.

2 Doc. 26 above.

46: Commissioner of Delhi to the Secretary Government of India (reg. interrogation)

File No. 44/2/43 – Home Poll (I)
[NAI]

From
A.V. Askwith, Esq., C.I.E., I.C.S.,
Chief Commissioner,
Delhi.

To
The Secretary to the Government of India,
Home Department,
New Delhi.

Delhi, dated the 12th July 1943.

Sir,

I have the honour to refer to the Home Department express letter No. 44/2/43 – Poll (I) dated the 30th June 1943,¹ which asked for a report in connection with the earlier Home Department express letter of the same number dated the 25th May 1943.²

In the Delhi Province the usefulness of police interrogation has long been recognised. No special staff is ordinarily maintained to carry out the interrogation of detenus, the work being done by the ordinary staff of the Provincial C.I.D. Persons detained in Police custody are kept either in certain special cells in the Red Fort or in police station lock-ups.

I have the honour to be,
Sir,
Your most obedient servant,
Superintendent of Police, C.I.D.
For Chief Commissioner, Delhi.

1. Not printed.

2. Doc. 54 in Chapter I-B.

47: Niharendu Dutta Mazumdar and other Petitioners v. A.E. Porter and others (Opposite Party) [Derbyshire C.J., Mitter and Khundkar J.J. Special Bench (14 July 1943)]

AIR, Vol. 32, 1945, Calcutta, pp.107-29

14-7-1943

Criminal Rules Nos 17 and 18 of 1943, in Misc. Cases Nos 58 and 54 of 1943, respectively, *Decided on 14th July 1943.*

P.C. Ghose and J.C. Gupta – for Petitioners.

S.M. Bose (Advocate-General) and J.N. Mazumdar (Standing Counsel)— for Opposite Party.

Derbyshire C.J. – These are two sets of proceedings in which rules have been issued by this Court upon the respective opposite parties to show cause why they should not be committed for contempt of Court. In the second matter, namely, that of Shibnath Banerjee, the rule also calls upon the opposite parties to show cause why Shibnath Banerjee should not be set at liberty. The two rules arise out of the same set of circumstances which are as follows: (1) Niharendu Dutta Mazumdar, (2) Shibnath Banerjee, (3) Bejoy Singh Nahar, (4) Debabrata Roy, (5) Narendra Nath Sen Gupta, (6) Birendra Ganguly, (7) Pratul Chandra Ganguly, (8) Nanigopal Mazumdar and (9) Sasanka Sekhar Sanyal who I will refer to hereafter as the detenus were held in detention under R.26, Defence of India Rules. On 22nd April 1943 the Federal Court declared R. 26 to be invalid having regard to the wording of the section of the Defence of India Act under which the rule was made. A day or two after 22nd April 1943 the said detenus obtained a rule from Sen J. under S.491, Criminal P.C., and on 7th May 1943 these rules came on for hearing before a Bench of this Court consisting of Mitter, Khundkar and Sen J.J. That hearing lasted until 31st May 1943. At a date before the hearing came on, the Government of India had amended the section of the Defence of India Act under which R.26 was made, in such a way as purported to validate R.26 as from the date that it was made.

On 31st May 1943 an order was made by the Court that the Chief Secretary to the Government of Bengal, Mr J.R. Blair should produce all the nine detenus before the Court on 3rd June 1943, when judgment would be given. It was represented to the Court that Sasanka Sekhar Sanyal was ill and the Court directed that he should only be produced if medical opinion was that he was fit to be produced. Another of the detenus, Birendra Ganguly was in a distant place where it was impossible to produce him in time and the Court apparently dispensed with his production. However the remainder of the detenus were produced in Court on 3rd June 1943 when judgment was given. Mitter J. delivered judgment first holding that all the detentions were illegal and that the rules should be made absolute. Khundkar J. delivered judgment next holding that the detentions were legal and that the rules should be discharged. Sen J. began delivering judgment at about 2.40 p.m. and finished somewhere just before 3.30 p.m. agreeing, in substance, with Mitter J. The final order of the Court was in accordance

with the judgment of the majority that the said detenus should be released. The detenus had been brought to Court under an armed jail guard, and a strong force of police was stationed both inside the Court room, in the Court building outside the Court room and also outside the Court building to prevent any demonstration or disturbance of the peace.

Before the order for the release of the detenus was made, there was the armed jail guard standing near them and, of course, there were many policemen in uniform and doubtless others not in uniform in the Court. Mitter J. when he made the order of release specifically said 'let the police clear off' and thereupon the armed guards and a number of policemen left the Court room. There does not appear to have been any further application made for any of the other policemen, who may have been in the Court room, to go away although Mr Gupta, counsel for the detenus, stated to the Court that he did not know whether, having regard to the way things were going on, he would not again move the Court for another habeas corpus order or a rule for contempt of Court. It then appears that the Judges left the Court room and adjourned for the day. They did not come back to Court. Meanwhile, inside the Court room, the detenus talked with their friends and relatives and apparently some of them had tea which had been brought there. Mr Niharendu Dutt Mazumdar, one of the detenus, during this time got up from his seat in the Court room, walked to the door and went through it into the corridor outside. There were a number of people in the corridor outside. Mr Dutt Mazumdar made his way a matter of a few yards or so along the corridor and was then spoken to by Inspector Syed Hasan, who certainly got hold of one of his arms, if not two. Mr Dutt Mazumdar said to the Inspector 'what do you mean' and the Inspector said 'I arrest you', whereupon Mr Mazumdar asked if there was any order. Mr J.C. Gupta, counsel for Mr Dutt Mazumdar, by this time got to the place and heard the Inspector say 'never mind about it' or 'it does not matter' or some similar words to that effect. Mr Gupta protested against Mr Dutt Mazumdar being handled by the Inspector, thereupon the Inspector, according to Mr Gupta, handed Mr Dutt Mazumdar over to two or three sergeants who were present, who took him forcibly, Mr Gupta says, to the Inspector's room, which was close by. Mr Dutt Mazumdar, according to Mr Gupta, asked to be taken before the Judges, but this was not done although some counsel not engaged in the case apparently saw Mitter J. in his Chambers and told him what had happened, whereupon Mitter J. said that he was *functus officio* and that must be a matter for another application. No such application was made on that day. Mr J.C. Gupta also proceeded to Mitter J. and on hearing what Mitter J. said to the other Barrister left Mitter J.'s Chambers. At this point of time Mr Janvrin, Deputy Commissioner of Police, Calcutta, who is of the Special Branch and in charge of the police who were employed in connexion with this matter at the Court on that day, had arrived on the scene in the corridor. Mr J.C. Gupta protested to Mr Janvrin against the manner in which the police had handled Mr Dutt Mazumdar.

Mr Janvrin's version is that Mr Dutt Mazumdar was told by Mr Gupta to go to the Inspector's room which he did voluntarily and that he was not dragged. Thereupon Mr Gupta and Mr Janvrin had a conversation. Mr Gupta says he asked Mr Janvrin whether he had any warrant for the arrest and, whether he had authority to execute it in the Court premises. Mr Gupta thereupon accompanied Mr Janvrin to the Inspector's room where Mr Janvrin showed Mr Gupta a file containing committal orders under Regn. 3 of 1818 signed by Mr Blair, Chief Secretary to the Government of Bengal. Mr Gupta's version then is that he told Mr Janvrin that if he wanted to arrest the other detenus in the Court room he, Mr Gupta, would go and tell them about it. According to Mr Gupta, Mr Janvrin said he would arrest them inside the

Court room and thereupon Mr Gupta went to the detenus inside the Court room and came back and told Mr Janvrin that he might go and read out the order of arrest to them. Mr Janvrin and the Police Inspector Mr Shib Chandra Chatterjee then went into the Court room with Mr Gupta and one copy of the order was read out and the names of the six persons inside the Court room were called out and then, according to Mr Gupta, those six detenus were arrested and came out with Mr Janvrin and were taken to the Inspector's room and, subsequently, removed in motor cars which were waiting. Mr Janvrin's version is that Mr Gupta said that if he, Mr Janvrin, would show him the written order under which he was acting he would get his other clients to offer themselves for arrest, that he showed him the file containing the orders of arrest and commitment and that Mr Gupta then went to the Court room where his clients were taking tea and returned and suggested that he might read the orders out to them. Thereupon Mr Janvrin said that he went into the Court room with Mr Gupta and Inspector Shib Chandra Chatterjee, who read out the orders and called out the names. The six detenus then came out of the Court room and Mr Janvrin, who was at the top of the staircase at the end of the corridor, directed them to go to the Inspector's room which they did Mr Janvrin followed them and when they asked him if they were under arrest Mr Janvrin said 'yes' and they were taken away in the cars.

In an earlier part of his affidavit Mr Janvrin stated that he was instructed by the Commissioner of Police to effect the arrest of the detenus if they were released, and that the arrests were to be made on the verandah outside the Court room or, if necessary, inside the Court room but after the Judges had left if the released persons refused to come out of the Court room. There is a further allegation that when Assistant Commissioner of Police Abdul Gaffur was asked the same afternoon by two barristers how it was that Mr Dutt Mazumdar was arrested in the Court precincts he replied that the police had the permission of the Chief Justice. Many of the detenus were men of some position in Calcutta — some of them including Mr Dutt Mazumdar being Members of the Legislative Assembly — and it was obvious that the police expected trouble. There undoubtedly was a considerable amount of excitement outside the Court from 3.30 p.m. onwards, and the affidavits must be read in that light. I think the best description of arrest is contained in Halsbury's Laws of England, 2nd Edn, vol. 9, p. 84 where it says that 'arrest consists of actual seizure or touching of a person's body with a view to his detention. The mere pronouncement of the words of arrest is not an arrest unless the person sought to be arrested submits to the process and goes with the arresting officer'.

The corresponding provision of the law in India appears to me to be contained in S.46 (1), Criminal P.C., which provides:

In making an arrest the police officer or other person making the same shall actually touch or continue the body of a person to be arrested, unless there be a submission to the custody by word or action.

Section 8, Criminal P.C., Provides that:

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested and, if so required, show him the warrant.

I have come to the conclusion that Mr Dutt Mazumdar was arrested in the corridor outside the Court room a few yards from the Court room door, that a certain amount of force was used by Inspector Syed Hasan, probably more force than was necessary. Inspector Syed Hasan did not show any warrant or authority for the arrest to Mr Dutt Mazumdar before arrest but Mr Mazumdar was told of it a little afterwards in the Inspector's room when Mr Gupta was

shown the warrants and committal orders by Mr Janvrin. As regards the other detenus, I think that technically they were arrested after their names were read out together with the warrants and committal orders by Inspector Shib Chandra Chatterjee, in the Court room—the moment of arrest being when they got up in order to follow Mr Shib Chandra Chatterjee out of the Court. No force whatever was used in their cases. At the time these arrests were effected the Court had risen and was, as Mitter J. said, *functus officio*.

It has been argued that arrests inside the Court building are improper. I cannot agree with that contention. Persons going to and from the Court upon the business of the Court in connexion with litigation are exempt from arrest under civil process but there is no such exemption in respect of Criminal process as the case in (1843) 12 L.J. Q.B. (N.S.) 49, referred to hereafter shows. If such general exemption were to obtain, the Court building would become a sanctuary for Criminals and the administration of justice in them would become impossible. There have been cases where arrests on Criminal process have occurred in the Sessions Court when a prisoner has been acquitted and discharged on one charge and re-arrested in the Court, while the judge is sitting, on another charge.

[*Omitted*: references to a judgement of Lord Denman in 1843 in the Queen's Bench, involving Capa. Douglas, an officer of the East India Company — Ed.]

It is here necessary to consider the legal position of these detenus when they were discharged. They were, each of them, free to go as they pleased to their homes—free from arrest on civil process; but not free from arrest on Criminal process. The freedom from arrest on civil process is a privilege which has been established by long usage and decisions. Does that extend to freedom from arrest under the Provisions of Regulation 3 of 1818? Regulation 3 of 1818 is entitled 'The Bengal State Prisoners Regulation'. The preamble sets out that:

Whereas for reasons of State . . . and the security of the British dominions from foreign hostility and from internal commotion occasionally render it necessary to place under personal restraint individuals against whom there may not be sufficient ground to institute any judicial proceeding, or when such proceeding may not be adapted to the nature of the case, or may for other reasons be un-advisable or improper; and whereas it is fit that, in every case of the nature herein referred to, the determination to be taken should proceed immediately from the authority of the Government . . .

'2. *First*. — When the reasons stated in the preamble of this Regulation (may seem to the Government) to require that an individual should be placed under personal restraint, without any immediate view to ulterior proceedings of a judicial nature (a warrant of commitment shall be issued by the Government) to the officer in whose custody such person is to be placed.

Second. — The warrant of commitment shall be in that one of the forms set out in the Appendix to this Regulation which is appropriate to the case.

Third. — The warrant of commitment shall, in relation to a person to be confined for reasons connected with defence, external affairs or the discharge of the functions of the Crown in its relations with Indian States, be sufficient authority for his detention in any fortress jail or other place in any Governor's Province or Chief Commissioner's Province, and in relation to any person to be confined for reasons connected with the maintenance of public order in a Province shall be sufficient authority for his detention in any fortress, jail or other place in that Province'.

Then follow other provisions which are not necessary to set out. The form of commitment

in the Appendix to Regulation 3 of 1818 has been followed in the present case. It is in these terms:

Government of Bengal
Home Department
3rd June, 1943

To
The Superintendent, Presidency Jail, Calcutta.

Whereas the Governor for good and sufficient reasons, being reasons connected with the maintenance of public order, has seen fit to determine that Shibnath Banerjee, M.L.A., shall be placed under personal restraint at the Presidency jail, Calcutta, you are hereby required and commanded, in pursuance of that determination, to receive the person above named into your custody, and to deal with him in conformity with the orders of the Government and the provisions of the Bengal State Prisoners Regulation, 1818.

By order of the Governor,
J.R. Blair,
Chief Secretary to the Government of Bengal.

The authority to arrest under Regulation 3 of 1818 is given by the State Prisoners Act of 1850 which states:

'The warrant of commitment of any State Prisoner under the Bengal State Prisoners Regulation of 1818 may, if it is issued by virtue of the powers conferred by that Regulation on Provincial Governments . . . be directed to . . . the officer in charge of any jail any where within the province in question; but any such warrant issued under that Regulation whatever the powers by virtue of which it is issued shall be sufficient authority for the arrest of the State prisoner anywhere in any Governor's Province and for his detention until he can be handed over to the officer to whom the warrant is directed.

It has been contended by counsel in support of the rule that the Governor was absent from Calcutta on or about 3rd June, and that the warrant of commitment set out above was not his work, but really the work of the Chief Secretary to the Government of Bengal, Mr Blair, and the latter being the person who signed the previous order of detention under R. 26. The Advocate-General for the respondents has drawn attention to S.59 (2), Government of India Act, which provides as follows:

Orders and other instruments made and executed in the name of the Governor shall be authenticated in such manner specified in the rules to be made by the Governor and the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made and executed by the Governor.

The order in question was authenticated in the usual way in which orders in the name of the Governor are authenticated namely, by the Chief Secretary or Additional Secretary to Government. We have thus to take it that the warrant of committal under Regn. 3 was executed by the Governor under his powers under Regn. 3 of 1818, by virtue of the State Prisoners Act of 1850 recited above, that is authority for the arrest of a state prisoner anywhere in Bengal. The question is — does it authorize the arrest of the detenus in the manner and at the time and place in which the arrest was made? The Court which made the order of release

had risen and adjourned for the day and the Court room would, in the ordinary way be given over to the clerks of the Court to clear up and later to the Court Keeper's staff for the purpose of cleaning. The Court was, as Mitter J. remarked when visited in his Chambers by a Barrister and Mr J.C. Gupta, counsel for the detenus, *functus officio*. The police would have been entitled to arrest any one in criminal process in that Court Room at any time after the Court had risen — to take an extreme case, at midnight — without the permission of the Chief Justice. They must not, however, create a disturbance so as to disturb any other work of the Courts that may be going on. There is no evidence that they did so disturb the work of any other Court. In a similar way, subject to similar reservations, the police were entitled to effect an arrest under a criminal process in the corridor.

The arrests in question were certainly not made pursuant to any civil process, nor were they made pursuant to any recognised criminal process. The arrest and detention under Regn. 3 of 1818 are neither civil process nor criminal process. If it were necessary for me to decide what it was I should hold that it was something *sui generis*, a more akin to criminal process than civil process, because it is a restraint on the freedom of the subject imposed by the state purporting to be for the safety of the state, which is one of the chief features of arrest on Criminal process. Moreover, it bears some resemblance to the procedure outlined under S.107 (3), Criminal P.C. However, that is not necessary to decide since the Act of 1850 provides that the warrant of commitment shall be sufficient authority for the arrest of the state prisoners anywhere in a Governor's province. That provision, and in particular the words 'anywhere in a Governor's province' however is subject to the exceptions and qualifications laid down in Denman C.J.'s judgment. It must not be in the face of the Court so as to create a disturbance of the Court's business and it must not be a fraudulent proceeding for evading the order of the Court which is made in habeas corpus proceedings or proceedings under S.491. Criminal P.C., analogous to habeas corpus proceedings. The arrests were not made in the face of the Court and were not done so as to disturb the business of the Courts.

The remaining question is — were the arrests a fraudulent proceeding to avoid or frustrate the order of the Court? Counsel in support of the rule has pointed out that the decision to arrest the detenus under Regn. 3 of 1818 was made even before the order of release under S.491 was made. In a similar way the information on which Capt. Douglas was arrested was taken out the day before he was brought before the Queen's Bench by habeas corpus proceeding and yet the arrest was upheld. It was stated in the affidavit of Mrs Shibnath Banerjee that she had seen Mr Shibnath Banerjee, one of the detenus, eight days after his return to prison. He was in the same jail as before and apparently kept under the same conditions. It must be pointed out however, that the detenus are certainly entitled to more rights and privileges under the present custody than they were under the former since they are now entitled to adequate allowances for themselves and their families according to their rank in life and are entitled to opportunities for presenting to the authorities their case against detention. Opportunities for presenting their case against detention do not exist and are not provided for under R.26 although they are provided for under Regn. 3 of 1818. We have to decide whether the arrests were a fraudulent proceeding to get round and flout the orders of the Court given under S.491 in which case there would, as Lord Denman pointed out, be a contempt of the Court. It is for those in support of the rule to satisfy the Court that is so. Mrs Shibnath Banerjee in her affidavit states:

Your petitioner believes that the respondents A.E. Porter and J.R. Blair anticipated that the said detenus

might be released on that day and so authorized the Police officers including the respondent Janvrin and the respondent Shib Chandra Chatterjee to act in the aforesaid manner in order to openly defy the Court.

In para 29 she submits that 'from the acts and conduct of the respondents the conclusion is irresistible that it was a vindictive act on the part of the respondents concerned calculated to bring the authority and dignity of the Court into contempt and to disgrace it in the eyes of the public by a defiant disregard of the order of the Court without the slightest excuse or justification'.

The order of release was made upon consideration of the circumstances under which the order for detention under R.26 had been made and also upon consideration whether R.26 having regard to the Ordinance amending S.2 (2) (x), Defence of India Act was legal. The facts upon which the order of detention under R.26 was grounded have never been disclosed. Indeed, there is no provision in R.26, Defence of India Act, for their disclosure. No challenge has here been made as to the validity of Regn. 3 of 1818 and no evidence was produced showing the grounds on which the order is based. We are left to gather as best we can from the surrounding circumstances whether this is a fraudulent proceeding to get round the order of the Court and flout the Court, the onus being on those who support the rule. Those who support the rule are in the same position as indeed are we, since the grounds of detention in each case are not revealed. There is a presumption under S.114, Evidence Act, that official acts are done with regularity. But that is a presumption only and is rebuttable. It may be that the grounds of detention are the same as in the former case, but as there was no evidence of or any decision on the grounds of detention in the former case, but only a decision on the validity of the order of detention and the provision of law under which it was made, we are not precluded from thinking that the grounds for the order of detention in the second case may be as are stated in the warrant of committal 'good and sufficient reasons connected with the maintenance of public order'. On the other hand they may not be. Since by the provisions of S.491, Criminal P.C., the Court is precluded from enquiring into whether a person is illegally or improperly detained in custody under the provisions of Regn. 3 of 1818 under the State Prisoners Act of 1850, I am unable to see how we can be the judges of whether there are good and sufficient reasons connected with the maintenance of public order for detaining these persons under Regn. 3 and the Act of 1850. I do, however, note that the times are abnormal in that there is a formidable enemy on our borders and that there has been grave disorder in India, although not a great deal comparatively in Bengal. It is possible in the circumstances that the arrests were made for good and sufficient reasons connected with the maintenance of public order.

There are one or two other circumstances which have some bearing on the question as to whether there was an intention to flout the Court. One is that when the Court ordered the Chief Secretary, Mr J.R. Blair, to produce the detenus before it, the Court's order was obeyed. The second is that when the Court ordered, in the words of Mitter J., 'the police to clear off', they did so. The burden is upon those who support the rule to convince the Court that there was a fraudulent intention to get round and flout the authority of the Court. On the materials before me, I am unable to come to the conclusion that the arrests were ordered as part of a fraudulent proceeding intended to flout the Court or its order. I am unable to conclude that there was in that respect any contempt. That disposes of the case against Mr Blair and Mr Porter. Next as regards the making of the arrests: It has been suggested that Mr Dutt Mazumdar was arrested without there being any warrant of commitment to justify it. Mr Janvrin in his affidavit says he got the warrant on 3rd June, but does not state the time of the day.

[Omitted: Some detailed discussion of the facts concluding thus — Ed.]

As far as Mr Janvrin was concerned, when the police were ordered to clear off, he together with the armed guard and several policemen left the Court. I can find no ground for saying that either Mr Janvrin or the police generally acted in contempt of this Court. . . .

As regards the Police Inspector Syed Hasan, although he was entitled to effect an arrest at the time and place that he did, in my view he showed discourtesy to Mr Dutt Mazumdar who was a member of the Legislative Assembly although he had been and subsequently became a detenu, and used more force than was necessary. This was not an arrest under the provisions of the Code of Criminal Procedure, so that the Inspector was not bound to show the warrant to Mr Dutt Mazumdar before arresting him. But he ought, in common courtesy, before seizing him, to have told him that he was under arrest and by what authority he was being arrested and to have asked him to come with him instead of seizing him by the arms and applying force to him in order to effect his removal. I can only regret that due courtesy was not shown to Mr Dutt Mazumdar and that premature and possibly unnecessary force was applied. That, however, is not contempt of Court and is a matter for adjustment between Mr Dutt Mazumdar and those who arrested him.

There is one matter to which I must draw attention. During the hearing it emerged that Regulation 3 contains provision which enable the detenu to be told what are the grounds on which he is detained and further provisions enabling that detenu to show cause why he should not be detained. I enquired from the Advocate-General whether there was any similar provision in R.26, Defence of India Rules. He told me, and as far as my research goes his answer is correct, that there is no corresponding provision either for informing the detenu of the grounds of his detention or for enabling him to show cause against it in the Defence of India Act or Rules. Under S.16, Defence of India Act, no order made thereunder shall be challenged in any Court. As the result of a legal accident R.26 has been challenged and declared invalid by the Federal Court. That declaration of invalidity enabled this Court to examine some, if not all, of the circumstances relating to the detention of these detenus. In the ordinary way these detentions do not come before the Court. It was a surprise to me when I found that there was no provision under R.26 to inform the detenu of the grounds on which he was detained and no provision for his being allowed to show cause against his detention.

There is a very old principle of law which is expressed by the Latin maxim *audi alteram partem* which means 'hear the other side'. So long ago as 1724, the Court of King's Bench had occasion to deal with that maxim. That was in the case in (1724) 1 Strange's Reports 557 where the University of Cambridge deprived Dr Richard Bentley, a famous scholar of his academical degrees without giving him first an opportunity of being heard. The Court of King's Bench laid down the principle that he could not be deprived of those rights without the opportunity of being heard in his defence and they did so in language which was emphatic but quaint. That case was followed in 1863 in (1863) 14 C.B. (N.S.) 180. There the Wandsworth Local Board under the powers which it had under the Metropolis Local Management Act of 1885 pulled down a house belonging to Mr Cooper on the ground that it was built in contravention of the law, but before doing so gave him no opportunity of showing cause why the house should not be pulled down. The Court held that Cooper ought to have been given an opportunity to show cause before the house was pulled down and followed and approved of what was said in the case of Dr Bentley and even recited some of the quaint language. In Regulation 3 which was passed in 1818 there

is a provision of enabling the detenu to be told what are the grounds for his detention and for enabling him to show cause against it. That same *principle of audi alteram partem* was followed by the Legislature in this country in 1818.

In 1940 under the Emergency Powers Act of 1939 passed in England on the outbreak of the War Regulation 18B was made providing for the detention of certain persons who were not brought to trial. Rule 26, Defence of India Rules, appears to be based upon Regn. 18B. Regulation 18B follows the principle I have referred to because it gives those detained an opportunity of having the grounds for their detention stated and showing cause against it. Regulation 18B (3) provides:

For purposes of this Regulation there shall be one or more advisory committees consisting of persons appointed by the Secretary of State; and any person aggrieved by the making of any order against him, by a refusal of the Secretary of State to suspend the operation of such an order by any condition attached . . . may make his objections to such a committee.

(4) It shall be the duty of the Secretary of State to secure that any person against whom an order is made under this Regulation shall be afforded the earliest practicable opportunity of making to the Secretary of State representations in writing with respect thereto and that he shall be informed of his right, whether or not such representations are made, to make his objections to such an advisory committee as aforesaid.

(5) Any meeting of an advisory committee held to consider such objections as aforesaid shall be presided over by a Chairman nominated by the Secretary of State and it shall be the duty of the Chairman to inform the objector of the grounds on which the order has been made against him and to furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case.

Provisions similar to that are completely omitted from R.26, Defence of India Rules. I draw attention to this matter in the hope that those responsible for this legislation may consider it. In my opinion all the rules should be discharged.

Mitter J. — Nine rules had been issued on Mr A.E. Porter, Additional Secretary to the Government of Bengal and others under S.491, Criminal P.C., to show cause why nine persons detained in the different jails of Bengal under orders passed under R.26, Defence of India Rules, should not be released on the ground that their detentions were illegal. Two of the persons so detained were Mr Niharendu Dutta Mozumdar, M.L.A. and Mr Shib Nath Banerjee, also an M.L.A. Those rules were issued after the Federal Court declared in *Talpade's case*¹ that R.26 was ultra vires the powers given by cl.(x) of sub-section (2) of S.2, Defence of India Act of 1939. Before the rules were heard an ordinance 14 of 1943, was promulgated by the Governor-General under the powers given by S.72 of Sch.9, Government of India Act, which purported to validate with retrospective effect the said rule. Those rules were heard by a Special Bench of this Court consisting of Khundkar and Sen J.J. and myself. The hearing lasted for over three weeks and was concluded on 31st May 1943, when judgment was reserved. On that date the Court intimated that judgment would be delivered on 3rd June. An order was also made for the production of eight of the persons so detained, including Mr Niharendu Dutta Mozumdar and Mr Shib Nath Banerjee in Court on 3rd June at 11 o'clock in the forenoon. With regard to the ninth man who was ill at the time the order was that he was to be produced if he was in a fit state of health. This order was duly communicated to the Chief Secretary to the Government of Bengal on 31st May. On 3rd June seven persons, including Mr Niharendu Dutta Mozumdar and Mr Shib Nath Banerjee were produced in Court.

A sufficient explanation was given by the Government for the non-production of the eighth

man. The Judges of the Special Bench were divided in opinion, the majority holding that Ordinance 14 of 1943 was ultra vires the powers of the Governor-General and even if it was ultra vires the material conditions required for a detention under R.26, Defence of India Rules, had not been fulfilled. In accordance with the opinion of the majority, the order of the Court was that the nine persons be forthwith released. As there were indications at the time of the pronouncement of the order for release that the seven persons who had been produced in Court would still be kept under restraint in spite of the order for release, the policemen (and there were quite a large number) who were in the court room were directed to leave the Court room so that free movement of the said seven persons may not be interfered with. That direction was obeyed and the policemen and the jail guards went out of the Court room. The Policemen, however, just stepped outside into the adjoining corridor, which is the passage to the court room and lined themselves up. Soon after the pronouncement of the order for release my learned brothers and I left the Court room at about 3.40 p.m. The other Courts were then sitting. It is the common case that within a few minutes thereafter, but within the Court house² (that is before 4 o'clock) and when other Courts were still sitting, Mr Niharendu Dutta Mozumdar stepped out of the court room accompanied by his Advocate Mr J.C. Gupta. He was immediately arrested in the corridor by an Inspector of Police, Syed Hasan, who was standing there but was not in uniform. He was taken into the Inspector's room in the Court building which is at a short distance from the place where he was arrested. Mr Shib Nath Banerjee and the remaining five persons who were still in the Court room were arrested, later on, but after Court hours and when all the Judges had risen. Whether they were arrested in the Court room itself or just outside is a disputed question but in the view I am taking is not a material one. Juline Janvrin, Deputy Commissioner of Police Special Branch, was admittedly in charge of the police force. He was sitting by the side of the standing counsel at the time of the delivery of the judgment but left the court room with the police, when just before pronouncing the order of the Court for release I ordered the police men to go out of the Court room. He admits that he received on 2nd June 1943, instructions from his superior officer, the Commissioner of Police, to see to the maintenance of order and to arrest the detenus in case they were released by the Court.

The first rule has been obtained by Miss Mira Dutta Gupta. It is a rule on Syed Hasan, Abdul Ghafar, Edwin James Brewer and Juline Janvrin, all police men, to show cause why they should not be committed for contempt of Court. The alleged contempt of Syed Hasan, Brewer and Janvrin has relation to the arrest of Mr Niharendu Dutta Mozumdar. The substance of the contempt of Abdul Ghafar is alleged scandalisation of the Hon'ble the Chief justice.

The second rule has been obtained by Mrs Shib Nath Banerjee. The rule is in two parts: (1) Why Mr Shib Nath Banerjee should not be released and (2) Why Mr Blair the Chief Secretary to the Government of Bengal, Mr Porter, the Additional Secretary to the Government of Bengal, Juline Janvrin, Shib Chandra Chatterjee (an Inspector of Police) and Charles Luke, the Superintendent of the Presidency Jail, should not be committed for contempt of Court. This rule has relation to the arrest and detention of Mr Shib Nath Banerjee.

It is unnecessary at this stage to deal in detail with the affidavits in answer. It is sufficient to state that it has been stated therein that both Mr Niharendu Dutta Mozumdar and Mr Shib Nath Banerjee were arrested on 3rd June and are being kept in detention, as on that date warrants of commitment had been issued against them by the Government under Regn. 3 of 1818. The true copies of the warrants have been set out in the affidavit of Janvrin and the originals were produced for our inspection. The warrants purport to be by order of H.E. the

Governor and are authenticated in the manner required by the rules framed under S.59 (2), Government of India Act.

So far as the matter of contempt is concerned, there are certain common questions of fact and law which I will now consider. The following points have been discussed as pure questions of law; in view of the fact that facts bearing on the said points are admitted, (1) that no person can be arrested in the Court room or within the precincts of the Court while the Court is sitting. An arrest of a person released by the order of the Court at such a place while the Court is sitting is contempt; (2) that a person released in pursuance of a writ of habeas corpus or by an order passed under S.491, Criminal P.C., cannot be arrested even outside the precincts of the Court and even on the public highway till he reaches home. If he is arrested before he reaches home, the arrest itself would be illegal.

In urging these two points the learned Advocate appearing for the petitioners contend that it would be contempt of Court, even if the arrest is under a valid warrant. The learned Advocate-General who has appeared to show cause has controverted both these propositions. He has gone further and has argued that a warrant of commitment issued under Regn. 3 of 1818 gives authority to a person to defy to our face an order for release passed under S.491, Criminal P.C. I will deal with these points first. I may at once say that I cannot accept the extreme contention of the learned Advocate-General, but at the same time I cannot accept the contentions of the learned Advocates appearing for the petitioners on the aforesaid two points in its relation to the facts of this case. I am prepared to accept the contention that a warrant of commitment under Regn. 3 of 1818 would give authority to arrest a person after he regains his liberty in pursuance of an order of release passed under S.491, Criminal P.C., but for considering the question of contempt of Court other factors, which I will indicate, later on, would have to be taken into consideration.

[Omitted: Judge discusses the case of Ameer Khan — Ed.]

. . . A detention under Regn. 3 of 1818 or detentions without trial under similar provisions of law would be purely executive acts, and for this proposition there is the weighty authority of the House of Lords, 1942 A.C. 206. I cannot accordingly accept the extreme contention of the learned Advocate-General.

For supporting the first contention Mr Ghose appearing for Miss Mira Dutta Gupta has cited before us a number of old decisions of the English Courts.

[Omitted: References to cases — Long's, Oldfield's case, Weighley's case — Ed.]

. . . As I understand the law a party to criminal proceeding enjoys no privilege for arrest or re-arrest, whenever the arrest takes place. A man who has been acquitted on a Criminal charge enjoys no such privilege. He can be arrested immediately upon another Criminal charge within the precincts of the Court after his acquittal. I am reserving my opinion as to whether he can in an emergency be arrested in the Court room itself while the Judge is sitting. But a party to a civil proceeding — and the same privilege is enjoyed by witnesses also — is privileged from arrest under a civil process on his way from his home to the Court premises, in the Court premises, and on his way back till he reaches home. A habeas corpus proceeding (and a proceeding under S.491, Criminal P.C., is of the same nature) is in essence a civil proceeding, for, it is concerned with the private right of a citizen, namely, the right of personal liberty. The true nature of a proceeding by *habeas corpus*, whether civil or criminal, should be determined by its object, which is not to punish, but to give relief from a civil wrong. It

is the remedy which the law gives for the enforcement of the civil right of personal liberty. Spelling on *Injunction and other Extra-Ordinary Remedies* (vol. 2, pp. 978 and 987-8, Edn 2). The General observations in Blake's case on which Mr Ghosh has relied must be taken with facts of that case. It does not mean that an order for release made on a writ of habeas corpus implies that the person released must be allowed to reach his home. It means that he cannot be arrested on a Civil process on his way home after his release on a writ of habeas corpus, as a proceeding under that writ is in essence a civil proceeding.

This leads us to the question as to whether a warrant of commitment under Regn. 3 is a civil process. The matter has been dealt with in some detail by my Lord the Chief Justice. I agree with his reasons and conclusions. I may add that it is not a civil process for the reason that the essence of a civil process is that it is set in motion at the instance of a private person for the enforcement of his rights against another private person. For these reasons I hold that the arrest of a person under a warrant issued under Regn. 3 of 1818 in the Court room when the Court is not sitting or within the precincts of the Court even when the Court is sitting would not by itself constitute contempt. The second rule issued at the instance of Mrs Shib Nath Banerjee is concerned with the arrest of her husband in the Court room but after Court hours. The arrest was in pursuance of a warrant issued under Regn. 3 of 1818. The warrant was in existence then. In fact it was read out by the Inspector of Police to Mr Shib Nath Banerjee at the time of his arrest. On the conclusion on the points of law indicated above the act of arrest cannot amount to contempt, unless it can be established by the petitioner that the issue of such a warrant was a mere device by which the order of this Court for release was intended to be circumvented. I agree with the conclusion of my Lord the Chief Justice, to the effect that there is not sufficient evidence which would lead us to the conclusion that the issuing of the warrants of commitment under Regn. 3 was a mere device. The averment in Mrs Shib Nath Banerjee's affidavit that the warrants under that Regulation were mere contrivances is based on statements of facts based on information and belief.

A statement made on information is really hearsay and that on belief is in effect opinion. It is only in interlocutory applications that statements on information or belief are admitted in evidence, because of the special provisions of the Civil Procedure Code (O.19, R.3) 41 Cal. 173 at p. 199. The only relevant statement, which is from knowledge, is that contained in para 34 of her affidavit. It is a statement which has not been denied. The circumstances may raise a strong suspicion that the original detentions under R.26, Defence of India Rules, were intended to be continued only under another name, but as in a contempt proceeding the evidence must be clear I cannot hold that an appeal to Regn. 3 was made a device to frustrate the order of release. In this view of the matter, it is not necessary to consider the precise effect of S.59 (2), Government of India Act, but I may state that nothing has been said in the argument of the learned Advocate-General which would induce me to modify the views I have expressed in my judgment in the proceedings under S.491, Criminal P.C., made on behalf of these nine persons. I accordingly hold that there is no case against Mr Blair, Mr Porter, Shib Nath Chatterjee and Luke. On this finding also we cannot direct the release of the detinue Shib Nath Banerjee. The last paragraph of S.491, Criminal P.C., also stands in the way of granting that prayer. I therefore agree that the second rule so far as it concerns the persons named above should be discharged. Julius Janvrin also is not guilty of contempt for the acts he did or directed in connexion with arrest of Mr Shib Nath Banerjee.

I will now consider the merits of the rule issued at the instance of Miss Mira Dutta Gupta. That rule concerns the arrest of Mr Niharendu Dutta Mozumdar. He was arrested before 4

o'clock; shortly after the order of his release had been passed. There are two versions of the place where he was arrested, the manner of his arrest and what followed his arrest. The version given by Miss Mira Dutta is that as soon as Mr Dutta Mazumdar came out of the Court room into adjoining corridor accompanied by his Advocate Mr J.C. Gupta, Syed Hasan suddenly pounced upon him from behind without any word of warning and forcibly grabbed him by the folds of his upper garment. Mr Dutta Mazumdar who was taken aback said 'what do you mean'. The answer was 'I arrest you'. Mr Dutta Mazumdar then asked for the authority, but the answer from Syed Hasan was 'never mind about it'. Thereafter on the direction of Syed Hasan two sergeants caught hold of him and dragged him to the Inspector's room. Syed Hasan's version is that he did not use any force, but simply followed Mr Dutta Mozumdar when he came out of the Court room and when he was about to cross the bridge he touched his elbow. He and Mr Gupta turned round. He asked Mr Dutta Mozumdar to come to the Inspector's room. Thereupon he declined and demanded his authority; on being told that he was under arrest he went to the Inspector's room. I will deal with other parts of his affidavit in another connexion. It is quite apparent that he is trying to shift the place of arrest to a place at some distance from the exit of the Court room and attempting to establish the fact that no force was used in effecting the arrest. He admits that Mr J.C. Gupta was then accompanying Mr Dutta Mozumdar. One significant fact is that he does not say that he never uttered the words 'Never mind about it' or words to that effect. Janvrin was not admittedly at the place of the arrest but though near it, has chosen not to give his version of the matter.

Mr J.C. Gupta has filed an affidavit which corroborates substantially the statements made by Miss Mira Dutta Gupta. Her version is also supported by the affidavits filed by Mr Jyotish Chandra Maitra, by Mr Manindra Banerjee, both Barristers-at-law, Mrs Amita Dutta Mozumdar and Sakti Charan Mitter, a clerk of Mr Meyer another barrister. In this state of the evidence I decline to believe what Syed Hasan has said and must hold that: (1) the arrest took place just outside the eastern door of the Court room at about 3.45 p.m. or so, (2) that Syed Hasan suddenly pounced upon Mr Dutta Mazumdar from behind and used unnecessary force, (3) when asked about his authority to arrest, declined to furnish the information but simply said 'Never mind about it', and (4) at his direction two sergeants caught hold of Mr Dutta Mozumdar and forcibly dragged him into the Inspector's room. I will leave out for the present the part played by Abdul Gaffur, for his alleged contempt rests upon another set of facts. I will state what followed afterwards and my conclusions thereon.

According to the version of Syed Hasan and Janvrin, Mr J.C. Gupta had a talk with the latter shortly after Mr Dutta Mozumdar's arrest and before Mr Gupta went to see me in my Chamber. Mr Gupta has given a different version. I cannot rely upon the version given by Syed Hasan. He has lied, as I have already said, on an important matter. I will show later on that Janvrin's affidavit is unsatisfactory. His affidavit is evasive and it shows an attempt on his part to hide material facts. There is nothing in the affidavit of Mr J.C. Gupta which would induce me to discard any portion thereof. In fact the learned Advocate-General has not chosen to comment on any portion of the said affidavit. That respectful attitude assumed by the learned Advocate-General towards Mr Gupta cannot be attributed to the fact that Mr Gupta is also a member of the same profession, for the learned Advocate-General did not feel oppressed by any sense of delicacy when he charged (and I may observe without any justification) two other barristers Mr Josho Prakash Mitter and Mr Girija Gupta Bhaya, Advocates of position, not only with false statements, but also for manufacturing false evidence. I accordingly give preference to the version of Mr J.C. Gupta where it differs from the versions

given by Syed Hasan or Janvrin. Relying on Mr Gupta's affidavit I have arrived at the following findings: (1) that shortly after the arrest of Mr Dutta Mozumdar, Mr Gupta saw me in my chambers (that was a few minutes after four o'clock according to my recollections); (2) that Mr Gupta did not meet Janvrin, nor had he any talk with him before he saw me in my chamber (3) that after returning from my chamber he spent some time in answering queries of several persons as to what the Judges had said, and in pacifying an excited crowd who had been shocked to see the rough manner in which Mr Dutta Mozumdar had been handled in the immediate precincts of the Court room, (4) that thereafter he met Janvrin, when the latter took him to the Inspector's room and for the first time showed him the file containing warrants under Regn.3 of 1818. This was just a short time before the arrest of the other six persons including Mr Shib Nath Banerjee in the Court room.

The time when Janvrin showed the warrants to Mr Gupta is important. In para 7 Janvrin states that Mr Gupta met him while Mr Dutta Mozumdar was still in the corridor. I cannot believe that statement. The opening line of para 8 is that Mr Gupta 'returned after a while', and told him that if he would show him any written order under which he was acting he would offer his other clients for arrest. Mr Gupta denies that he ever made such an offer. In the said sentence Janvrin is obviously hinting at Mr Gupta's return from my chamber. He wants to give an impression by the words used in the opening of para 8 that Mr Gupta saw the warrants under Regn.3 almost immediately after his return from my chamber. From the affidavit of Mr Gupta it appears that there was a considerable interval of time between his return from my chamber and the time when he was showed those warrants. That Mr Gupta's version on the point is true is in a way admitted by Janvrin in the last portion of para 8 of his affidavit. That portion suggests that Mr Gupta was shown those warrants just before Janvrin and Shib Nath Chatterjee went into the Court room to arrest the other six persons. Janvrin admits that these persons were then having tea. There was a huge crowd in Court on that date. At the time of the arrest of Mr Dutta Mozumdar that crowd had not dispersed. The crowd was there when Mr Dutta Mozumdar was arrested. The manner of his arrest raised excitement and resentment. The crowd saw Mr Gupta leaving the place to see the Judges and awaited his return. The six persons could not have been supplied with tea in the Court room till after a considerable interval of time had elapsed after Mr Dutta Mozumdar's arrest. These facts lead to the irresistible inference that the warrants issued under Regn.8 were shown to Mr Gupta after a considerable interval of time had elapsed after Mr Dutta Mozumdar's arrest. It would not be a speculation if that interval be taken to be an hour or so. There was thus sufficient time for the preparation and issue of those warrants after the arrest of Mr Dutta Mozumdar.

In para 3 of his affidavit, Janvrin has stated that on 2nd June 1943 he was instructed by the Commissioner of Police to arrest the detenus if they were released, in the veranda outside the Court room, and if necessary, inside the Court room but after the Judges had left. In his affidavit he gives details of the disposition of the police force placed under him on 3rd June. He had entrusted the duty of arrest to plain clothes officers of the Special Branch. Syed Hasan was one of such officers. In his affidavit Syed Hasan says that he got orders from Janvrin on 3rd June that the detenus should not be allowed to contact with the public, but should be taken to the Inspector's room on their release and only if they refused to go there they were to be arrested. The statement that they were not to be arrested in the first instance is undoubtedly false. It is against Janvrin's statement. It has been made to meet the petitioner's case as to the manner in which he made the arrest of Mr Dutta Mozumdar. One thing,

however, is clear from this statement, that he was not to allow the detenu to come in contact with the public after their release. The statement cannot refer to the conditions before their release for, before their release they were not to be and actually were not in charge of the police but of the jail guards who had brought them from jail. It is admittedly the case that no warrant was shown either to Mr Dutta Mozumdar or to Mr Gupta at the time the former was arrested. Nothing was said at that time about warrants under Regn.3. When asked about his authority to arrest he gave reply, 'Never mind about it', which shows that he had not then in his possession the warrants of arrest which were issued to the Commissioner of Police on 3rd June 1943. The original warrant of arrest which concerned Mr Dutta Mozumdar was shown to us by the learned Advocate-General. It was of the same form as the copy which has been annexed as EX. A to the affidavit of Janvrin filed in the other rule. His reply also shows that he had not been told by Janvrin about the existence of such a warrant. It is unthinkable that the warrant, if it had been issued then, would not have been handed over by Janvrin, to the persons to whom he had entrusted the duty to arrest or that the man would not be told beforehand the nature of authority by which he was being empowered to arrest. The petitioner has made the definite case that the warrants under Regn. 3 were not in existence at the time of Mr Dutta Mozumdar's arrest. Janvrin could have definitely refuted that case by making a clear and unambiguous statement about time of the day when he got those warrants. Instead of making a clear statement he makes a vague statement in para 5 of his affidavit that he got those warrants on 3rd June 1943. Certainly he had them on 3rd June, just before the arrest of Mr Shib Nath Banerjee and the other five, for they were shown to Mr J.C. Gupta, about that time, but the question is whether he had them in his possession before that time. This evasive statement confirms what I infer from the other circumstances, which I have detailed above, that the warrants under Regn.3 of 1818 against Mr Dutta Mozumdar and others had not been issued at the time of Mr Dutta Mozumdar's arrest. He was arrested simply because the Commissioner of Police had on 2nd June instructed Janvrin to arrest all the detenues immediately on their release. The arrest of Mr Dutta Mozumdar accordingly constitutes contempt as there was no legal warrant for his arrest at the time and those concerned with his arrest are liable to commitment. It is no answer to the charge of contempt that the police officer who directed the arrest or who actually arrested him had to act on the orders of the superior officers. That fact can be taken into consideration only for determining the punishment to be meted. I have already found that Mr Dutta Mozumdar was arrested immediately after he stepped out of the Court room at a place very near the eastern door of the Court room. He was arrested a few minutes after we rose. Just before the order of release was passed, because the policemen present in the Court room showed such a degree of alertness which indicated that they would close up on the detenu immediately after the order of release, I directed the policemen present in the Court room to move outside. That order was obeyed. The obedience to that order cannot lead to the only inference that all the policemen had, irrespective of their instructions, the genuine desire to obey all lawful orders of the Court. They had to move out, for otherwise they would have been guilty of contempt in the face of the Court and there would have been no scope of inventing explanations. The description of the proceedings in Court as tamasha by Janvrin, a statement which has not been denied by him, showed which way the wind was blowing. To say the least it is the height of impudence on his part to describe proceedings of this Court in that manner and that itself constitutes contempt. I cannot gather words strong enough to express my disapproval of his conduct. After the policemen went out of the Court room accompanied by Janvrin they lined up at

the corridor and close to the exits from the Court room. This has been stated in para 18 of the petition of Miss Mira Dutta Gupta and has not been denied. Syed Hasan admits that Janvrin's instructions were that the detenus on their release were not to come in contact with the public. I accordingly hold that so far as Mr Dutta Mozumdar is concerned he was not freed from constraint. So far as the other six persons are concerned they enjoyed liberty for a short time but there was only a parody of liberty in the case of Mr Dutta Mozumdar. Even if the warrant for his arrest had been issued at the time he was arrested, the Court's order cannot be said to have been obeyed.

In the connected rule I have given my reason for repelling the extreme contention of the learned Advocate-General that it would have not been contempt even if on the pronouncement of the order of release the policemen were to fling the warrants issued under Regn. 3 of 1818 at our face and say that they would not carry out the order of release. What has been done in the case of Mr Dutta Mazumdar virtually amounts to flouting the order of release, though not exactly in that dramatic fashion. There cannot be any doubt in my mind that the acting was such as would convey to the mind of the public that the power of the police is supreme. The remark of Syed Hassan to the effect 'never mind about it' would only confirm that belief. It would convey the idea 'never mind the High Court's order, I arrest you and would not deign to give you the authority under which I am arresting you, for do you not know that I am a police officer'. There cannot be any doubt that the manner in which Mr Dutta Mazumdar was arrested would calculate to affect the dignity of the Court. While I am of opinion that Judges should not be over-sensitive of their personal dignity, they must always be jealous of the dignity of the Court and nothing savouring of contempt must be allowed to pass unnoticed, uncensured or unpunished. This leads me to consider the question raised by the Advocate-General as to whether an act calculated to affect the dignity of the Court is contempt. He has given a bold answer in the negative. He has admitted that words spoken or acts done which are calculated to affect the authority of the Court is contempt, but says that authority does not mean or include dignity. For that purpose he has referred us to the following passage of Wilmot C.J.'s undelivered judgment in (1765) Wilmot 243: 97 E.R. 94 as quoted at pp. 240 and 241 of 63 Cal. 217.

[*Omitted:* The Judges exposition of passages in the judgement of Wilmot C.J. — Ed.]

I now come to the case of Abdul Ghafur. In her affidavit in support of her petition Miss Mira Dutta Gupta stated that that officer had given out that the arrest was made in the Court precincts with the permission of the Hon'ble the Chief Justice. That petition was moved in Court on 8th June 1943, when a rule was issued. A statement has been made from the Bar that at that time the Court asked the Advocate appearing for her to put in as many affidavits as could be had to corroborate her statement on that point. In pursuance of that request, two Barristers-at-law, Mr Girija Gupta Bhaya and Mr J.P. Mitter swore affidavits on 10th June following. In those affidavits they say that as soon as they came out of the Court room they met Abdul Gaffur, whom they know from before, in the corridor just outside the Court room. On their enquiry, Abdul Ghafur told them that the arrest was made there as the police had the permission of the Hon'ble the Chief Justice. They met Mr N.K. Basu, Advocate on their way to the Bar Library and told him what Abdul Ghafur had said and later on communicated the matter to their barrister friends in the Bar Library including the Advocate-General and the Standing Counsel. Abdul Ghafur in his affidavit denies having made that statement. He admits meeting the said two gentlemen, but says that the meeting place was not in the corridor,

but in the passage leading to the Inspector's room which is behind the staircase. It seems to me that the last mentioned statement is false. The place of meeting would naturally be in the passage leading to the Court room where the two gentlemen had come out after listening to the judgments of the Court.

After Mr Ghosh had placed the affidavits he tendered all the persons who had sworn affidavits in support of his client's case for cross-examination. The learned Advocate-General did not, however, choose to cross-examine any one of them. In the course of his argument he, however, contended that the statements made by those two gentlemen were false and Abdul Ghafur's version was correct. He even went to the length of suggesting that those two gentlemen were conscious of the fact that their statements were so improbable that no Court would believe them, so they introduced the name of Mr N.K. Basu, of the Standing Counsel and of himself. He however did not deny the fact as to whether Mr J.P. Mitter had spoken of the incident to him immediately after. On that point he was silent. These gentlemen filed affidavits by reason of the General request from the Court. I do not wish to discuss the matter further. All I say is that I believe these two gentlemen and that the attack on their credit was neither merited nor justified. The statement made by Abdul Ghafur to those gentlemen constitutes contempt of the same type as was considered in 63 Cal. 217 where this Court on its own motion took notice of the contempt and meted out punishment. That statement made by Abdul Ghafur is false. Even if no permission of the Honourable the Chief Justice for arresting in the precincts of the Court was necessary, the implication of the statement, which clearly suggests if I may use the expression used in 63 Cal. 217, 'hobnobbing with the executive' is not taken away. It constitutes contempt. As my learned colleagues are of different opinion regarding Janvrin, Syed Hassan and Abdul Ghafur, it is unnecessary for me to consider the question of punishment, but I cannot help observing that the attitude maintained by them does not seem to me to be proper. They are public servants whose duties require them to be in the service of law. No regret was expressed by them either in their affidavits nor by the Advocates appearing for them, even on behalf of Syed Hasan after all of us had expressed our views in the course of the argument that he had acted in an unseemly way in arresting Mr Dutta Mozumdar and had used force when no force was necessary.

Khundkar J. – As regards Miscellaneous case No. 54, which arises out of the rule obtained by Mrs Shibnath Banerjee, I agree with my Lord the Chief Justice and my learned brother Mitter J. that this rule should be discharged, and as I concur in the reasons for so holding which are contained in the judgments just delivered, it is unnecessary for me to add anything to what has been stated therein regarding this rule.

[Omitted: Judge gives some reasons on points where he differed from Justice Mitter -- Ed.]

In my judgment, the arrest of Mr Dutta Majumdar very soon after an order for his release was made by the Court, cannot in itself amount to contempt. It was however insisted that the precipitancy of the arrest, and its execution in the corridor of the arrest, constituted a flaunting by the arresting officers of their commission in the sight of the Court. This, it is contended, was a flagrant affront deliberately offered to the dignity of the Court. Here I think there may be some danger of a confusion of thought. An arrest carried out in obedience to lawful command, in a place covered by that command is one thing. It must not be forgotten that an arrest in pursuance of a warrant of commitment under Regn.3 may be effected anywhere. A gratuitous insult to the Court is another thing. An act in itself lawful can be carried out in a manner which is offensive. But where the act does not in itself constitute contempt, we must

be careful to distinguish the act from circumstances connected with the manner of its performance which are not necessary to the act but are adventitious or extrinsic to it. What is really reprobated in the argument here is the incidence or bearing of time and place on the arrest, and not the arrest itself. It is necessary therefore to refer again to what actually took place. The police had left the Court room under the eyes of Judges and in obedience to their orders. The Court had risen for the day and the Judges had retired. Mr Dutta Majumder had gone out of the Court room, and was walking along the corridor outside. It was then that he was arrested. It cannot be denied that the purpose of the arrest was to carry out a duty laid by lawful command on the arresting officer, and therefore it calls for some exercise of imagination to visualize such an arrest, in the circumstances just mentioned, as a flaunting of the arresting officers authority in sight of the Court. I do not think there is any authority for holding that the principles of contempt would extend so far. In (1843) 12 L.J.Q.B. 49 it appears from the report at p. 52 that the events surrounding the Captain's arrest bore a striking similarity to what occurred here:

Kelly. – 'Captain Douglas cannot be detained in the manner. He has been discharged by the Court.'

Per Curiam. – 'The judgment of the Court must have some effect. Capt. Douglas is free to go where he pleases.'

Capt. Douglas then left the Court. Immediately after he had left the Court, he was arrested upon a capias issuing out of the office of the Sheriff of Middlesex.

In the present case the Court said the police were to 'clear off'. The police did clear out, the Court adjourned, and Mr Dutta Majumder was arrested outside the Court shortly afterwards. The rule that arrest in the Court precincts constitutes contempt rests on another foundation disturbance or interruption of the Court's proceedings. The principle of the cases in which it arose is indicated in the judgments of my Lord the Chief Justice and my learned brother Mitter J. and I need say nothing further regarding that aspect of the case. But of one thing I am quite satisfied here, that it cannot in any fairness be said that the place of the arrest or the time of the arrest were deliberately selected only to insult the Court. The sufficient answer to this would be that the Court was not there. Quite distinct from this question of insult, however is the second point above indicated, viz., that the manner in which Inspector Hasan acted when arresting Mr Dutta Majumdar was calculated to lower the authority of the Court.

Before I go further, I would like to say something about this officer's behaviour towards Mr Dutta Majumdar. The Inspector has denied the allegations of rudeness and aggression made against him, but formidably arrayed against his denial are an imposing number of affidavits to which we may freely refer. The Court has to decide this question of fact on the preponderance of the materials before it. It is the word of one against the word of many, and no one was cross-examined. There seems to be little room for doubt that the Inspector laid hands on Mr Dutta Majumdar, and when asked by the latter the meaning of the affront, answered rudely 'never you mind' or words to that effect. There was no justification for such conduct. Mr Dutta Majumdar was not an escaping criminal. He is a gentleman of education and social position, member of the Bar, a member of the Legislative Assembly of the Province, who finds himself under constraint on account of his political views and activities. To treat him as Inspector Hasan did was unwarrantable. But apart from the courtesy due to Mr Dutta Majumdar's station in life, the conduct of the Inspector merits the disapproval of the Court for a reason that is broader based. It has often been justly remarked that the police in this

country are prone to forget that they are the servants of the state and not its autocrats. Acts of churlishness and truculence on the part of individual police officers towards members of the public are unfortunately not of infrequent occurrence, and they do not enhance the reputation of the police as guardians of law and order. Such conduct calls for an expression of the Court's severest displeasure whenever it is brought to its notice. This however is a different thing from saying that the affronts offered to Mr Dutta Majumder by the Inspector constituted a contempt of Court on his part as well as on that of his superior officer, Mr Janvrin. The proposition that the boorish treatment bestowed upon Mr Dutta Majumder was contumacious of the Court rests upon the assertion that its arrogant character had the tendency of lowering the dignity of the Court in the public estimation. The haste with which the arrest was effected and the place where it was carried out were referred to in this connexion, but those are matters with which I have already dealt.

The point I have to consider here is whether, assuming there was some degree of physical violence in the arrest, that circumstance, coupled with the brusque words 'never you mind' with which Mr Dutta Majumder's demand for an explanation was summarily dismissed, would be injurious to the dignity and therefore the authority of the Court. The learned Advocate-General has, in reply to this argument, contended that the impression which an act may create in the public mind is not the test of contumacy. The real test is the reason for the act. The reason here was the order for the arrest. This involves the doctrine that mere impressions in the public mind are too transitory and variable to afford a standard for judging contempt of Court and appearances are often misleading when one is searching for the underlying substance of a justifiable issue. On the face of it this view is plausible. But I think one must, in the first instance, look for what is meant by the expression 'lowering the dignity of the Court'. The Court's dignity is a precious and delicate thing, and a disturbance of its balance may have far-reaching consequences to the administration of justice. Public confidence in the ability of the Court to administer justice must be maintained, and the public estimation of the Court's authority, power and dignity though not the only factor in securing that confidence, is an important one nevertheless. In Oswald's book on Contempt of Court it is stated that contempt 'in the legal acceptance of the term, primarily signifies disrespect to that which is entitled to legal regard'. 'Insolence to the Judge by insulting words or conduct', says this author, constitutes contempt. In Halsbury's Laws of England vol. 7 the matter is presented thus.

It is not from any exaggerated notion of the dignity of individuals that insults to judges are not allowed, but because there is imposed upon the Court the duty of preventing *brevi manu* any attempt to interfere with the administration of justice.

In Viner's Abridgment, title Contempt A, referred to in (1838) 132 E.R. 910 contempt is described as 'a disobedience to the Court or an opposing or a despising the authority, justice or dignity thereof. It commonly consists in a party's doing otherwise than he is enjoined to do, or not doing what he is commanded or required, by the process, order, or decree of the Court'.

In (1846) 10 Ir. Eq. Rep. 93 one class of cases in which Courts of Equity exercised the authority of committing for contempt was thus described:

When the Court which issues the attachment has awarded some process, given some judgment, made some legal order or done some act which the party against whom it issues, or others on whom it is binding, have either neglected to obey, contumaciously refused to submit to, incited others to defeat by artifice or force, or treated with terms of contumely or disrespect in the face of the Court, or of its minister charged with the execution of its acts.

(1765) 97 E.R. 94, to which reference has been made by my learned brother Mitter J. was a case of libel upon the Court of King's Bench Division by publication of a pamphlet which attacked that Court and the Chief Justice, Lord Mansfield, and charged them with having introduced a method of proceeding to deprive the subject of the benefit of habeas corpus. Wilmot J. drew up an opinion on the case, which was never delivered in court, because the proceedings were dropped. The opinion was published after his death, and it has been frequently referred to with approval and respect. It was not followed by Fletcher J. in (1818) MOO. P.C. 36n 13 E.R. 15n who expressed his view of it in a passage quoted by Mukherjee J. in 63 Cal. 217 at p. 242.

The hasty and warm ebullition of a mind fraught with arbitrary notions, irritated and excited by a severe attack upon the whole Court, especially upon his venerated and adored Chief Justice, and the very reverse of what is called a considered, digested and ulterior opinion.

Although I have reproduced the quotation, I do not think it is of any particular importance in the present case, because as already just indicated, *Almon's case* was concerned with a libel on the Courts, and not with any other act which tended to undermine its authority. I have no doubt that, if the police had refused to obey the order to leave the Court room, that would have been contempt. I have no doubt that if the arrest of Mr Datta Mazumdar had been carried out when, and where it was, without lawful authority and the Court just having ordered his release, that also would have been contempt. But I cannot gather from any decision which has been brought to my notice that the affronts put upon Mr Dutta Mazumdar, should in the circumstances of this case, be regarded as an insult to the Court, or that it undermined the authority of the Court, by lowering the dignity of the Court in the public estimation. The last mentioned conclusion can be distilled from judicial decisions only by the discursive application of General words which enshrine the principle, that acts which are subversive of the Court's authority or which otherwise display a tendency to undermine public confidence in the administration of justice, amount to contempt.

I come now to the third point argued in the case against Mr Janvrin and Inspector Hasan, which was that no warrant of commitment under Regn. 3 was in existence when Mr Dutta Mazumdar was arrested. The onus of shewing this is on the petitioner. These warrants are dated 3rd June 1943, the day of the arrest. In para 3 of his affidavit Mr Janvrin speaks of the orders he received from the Commissioner of Police on 2nd June and in that paragraph he says that he was instructed to effect the arrest of the security prisoners if they were released. It is pointed out that the warrant for his arrest was not shown to Mr Dutta Mazumdar when he was arrested. The fact that Inspector Hasan said nothing about a warrant is referred to. The events which took place between the arrest and the production of the warrants for Mr J.C. Gupta's inspection are dwelt on. Arguing the inference from all these circumstances the conclusion is sought to be reached that the warrants under Regn. 3 were brought into existence after Mr Dutta Mazumdar had been arrested. My learned brother Mitter J., has been persuaded to accept this conclusion. After giving the matter anxious consideration, I find myself, with the greatest deference to my learned brother, unable to agree. These warrants, seven in number, were drawn up and signed in the Secretariat Buildings. If they were not in existence when Mr Dutta Mazumdar was arrested it is unlikely in the extreme that Mr Janvrin would have been in possession of them when Mr Gupta spoke to him. Pondering Mr J.C. Gupta's affidavit with the utmost care I cannot see how, as suggested, an hour must have elapsed between the time when Mr Dutta Mazumdar was arrested and the moment when the file

containing the warrants was shewn to Mr Gupta. Mr Gupta went to my learned brother Mitter J.'s chamber when Mr Dutta Mazumder was arrested. The chamber is not far away. He returned from there almost immediately. He spoke to some persons and then met Mr Janvrin and was shewn the warrants. The argument advanced necessarily involves the assertion that the warrants were prepared in the Secretariat Offices and delivered to Mr Janvrin in less time than it took for the events just indicated to happen. Official business takes time to transact. Its routine is elaborate and its march unhurried. The warrants, seven in number, would require to be drawn up or at least filled in. They would have had to be signed; their reference numbers or other marks would have had to be entered in some register; they would have had to be placed in a cover, and handed to a messenger who would require to be instructed as to the person to whom they were to be delivered and the place at which he would be found. The messenger would have had to cover the distance which separates the Secretariat Buildings from the High Court. Arrived here he would have had to find Mr Janvrin in a crowd of people who were standing about in the corridors between the Sessions Court room and the Inspector's room. The warrants, it is asserted, were not in existence when Mr Dutta Mazumder was arrested, yet when Mr J.C. Gupta came to Mr Janvrin the latter produced them from a file with what would look like the dexterity of a conjurer producing rabbits from a hat. It is an argument I am unable to accept. The case against Assistant Commissioner Khan Saheb Abdul Gaffur remains to be considered. The affidavit of Mr Girija Gupta Bhaya contains this statement:

I came out of the Court room accompanied by Mr J.P. Mitter, Barrister-at-law and met Mr Ghafur, Assistant Commissioner whom we both knew. In the corridor just outside the Court room I enquired from Mr Ghafur how Dutta Mazumder could be arrested in the Court precincts whereupon the said Mr Ghafur said that the Police had the permission of the Chief Justice. Mr Mitter was with me when the said Mr Ghafur said so.

Thereupon Mr Mitter and I returned to the Bar Library and on the way near the Advocates' Library we met Mr N.K. Basu Advocate and Mr Mitter said to Mr Basu, 'Have you heard that the Chief Justice has permitted arrest of these men in the Court. Can he do that?' Mr Basu smiled and said 'I reserve my judgment'

After I came back to the Bar Library, I spoke to the Standing Counsel amongst other friends about what I had been told by Mr Ghafur.

The affidavit of Mr Josho Prokash Mitter contains the following statement:

I came out of the Court room with Mr Gupta and met in the corridor Mr Ghafur, Assistant Commissioner of Police, whom both of us knew. Mr Gupta enquired from him how it was that Dutta Mazumder had been arrested in the Court precincts, whereupon Mr Ghafur informed Mr Gupta that the Police had the permission of the Chief Justice. I returned to the Bar Library club accompanied by Mr Gupta. On the way I met Mr N.K. Basu and asked him if he had heard that the Chief Justice had permitted the arrest of these persons in the Court precincts and whether the learned Chief Justice could do so. Mr Basu returning to the Bar Library Club I spoke about it to Mr S.M. Bose, Advocate-General.

Now, if the statement imputed to Khan Saheb Abdul Gaffur that the Chief Justice had accorded permission for the arrest of Mr Dutta Mazumder is contempt by reason of its being a slander of the Chief Justice, then as the learned Advocate-General remarked, the repetition of this statement would amount to a publication of the slander. But in my opinion, good sense requires that the matter should not be looked at in *vacuo*. Excitement was probably running high, and what it would be unpardonable to repeat under normal circumstances, might very well be overlooked when uttered in a mood of excitability at a time when public curiosity was

in a ferment. I think we may safely acquit these gentlemen of any intention to defame the Chief Justice. But if a technical publication of slander may be condoned in the cases of two barristers learned in the law, I cannot see how we can for that slander punish a police officer who must be less acquainted with the lore of defamation and contempt. After all did this officer intend to be disrespectful? This is not the case of one who says in words that have been measured and weighed and deliberately selected that the Chief Justice has become a creature of the executive. These were the words of an excited person who had no time to consider the legal implications of an answer he was making to the question of another excited person. Surely the Court is not expected to visit with punishment every unguarded impromptu utterance which may possibly contain an innuendo which is defamatory of the Court or of a Judge. I say 'possibly' for can we be sure, in all the circumstances, that the statement 'that the police had the permission of the Chief Justice' carried the implication that the Chief Justice was subservient to the executive? I do not find it difficult to think of more than one construction quite innocuous which these words might bear. The Khan Saheb, who had nothing to do with the arrests, might very well have heard that the permission of the Chief Justice had been obtained for the unusual policing precautions taken in the High Court building on that day. He would have known at the same time that the Deputy Commissioner in charge of the police party had authority to arrest the security prisoners. Slipshod association of ideas and carelessly chosen words might have led him to say something which gave Mr Gupta Bhaya and Mr Mitter the impression which they seem to have received. This I think is quite probable and I am therefore not prepared to say that the statement attributed to this officer was within the mischief of a contempt which consists of a slander on the Court or on a Judge.

In 63 Cal. 217 Mukerji J. gave careful consideration to the alternative meanings of the word 'hobnobbing' before accepting the view that 'hobnobbing with the executive', meant 'mixing freely in a cringing spirit with a view to curry favour' with the executive. Reading that case as a whole, there can be little doubt that the Court unanimously found that the article complained of was a calculated and deliberate contempt, and as the Chief Justice said, 'capable of great public mischief'. That case bears little parallel to the case alleged here either as regards the intention of the delinquent, or, the consequences to the administration of justice of the words which were employed. The basic principles of libel have been set out in many well known text books on that subject but few surpass in clarity and simplicity of expression the now ancient work entitled 'The Law of Libel' by Holt. I would like to quote the passage with which the author concluded his Chapter in Libels against Courts of Justice:

It is necessary as we have shewn, that Courts of Justice should have power to punish for contempts, but it is a power which has its justification in necessity alone, and should rarely be exercised, and never but in those cases where the necessity is plain.

In Miscellaneous case No. 58 the complaint against Sergeant Brewer was not developed, and I do not think it necessary therefore to say anything about it. As already stated at the beginning of my judgment, I am of the opinion, that both rules should be discharged.

By the Court. - These rules are discharged.

Rules Discharged.

R.K.

1 Doc. 27.

2 In the original document it is printed as House. May be this is a misprint for 'hours'.

48. Official Notings reg. interrogation (15.7.1943-17.7.1943) (extracts)

File No. 44/2/43 - Home Poll (I)

[NAI]

A Summary of the replies so far received to our letter of 25-5-43¹ is put up.

2. It will be seen that in most provinces there are no special interrogation centres and that interrogation is conducted by officers of the special Branch. (Coorg and Baluchistan may be omitted from consideration at present.) Apart from the Punjab, Madras, Bombay & U.P. are alive to the need for interrogation. The U.P. consider their present arrangements, viz., interrogation by officers of the S.B., or Hqrs staff of the C.I.D. quite satisfactory. Madras consider their arrangement satisfactory for ordinary purposes, but not for the interrogation of leaders of all-India importance. The question of establishing an interrogation centre is under consideration. Bombay are satisfied with the arrangements in Bombay City. Though they had to send 2 fifth-Columnists to the C.S., D.I.C., recently. Our suggestions will be borne in mind by them when considering the proposed reorganization of the C.I.D. We should perhaps ask to be informed of the decisions on (1) the question of an interrogation centre in Madras (2) the reorganization of the Bombay C.I.D.

3. The Bihar, C.P. and Assam replies are hardly satisfactory. Bihar do not say who conducts the interrogation at present (cf. J.S.'s pencil remarks on S.No. 13). Bihar had the worst of the Congress Disturbances and Jai Prakash Narain & his C.S.P. group belong to that province. The importance of adequate arrangements for interrogation of suspects there need hardly be stressed. We should perhaps ask for more information which would justify their present attitude. If pressed, they might of course plead paucity of suitable officers as a difficulty.

4. As regards C.P., we may agree that the qn. of detention in police custody might be taken up when the need arises but there should be no harm in providing for police custody as an alternative to jail custody in advance against real emergency. They add that specially selected and trained interrogation staff would not be available. This was exactly the reason why we suggested that steps should be taken to provide such staffs. As regards the last sentence of the C.P. letter, the main point of our letter was that interrogation by special staff should be undertaken in respect of the more important persons. We may perhaps explain the position to the P.G.² and suggest that the question of providing special staff should be further pursued.

5. Assam also plead lack of officers as one of the reasons why special staff are not necessary. Lack of officers may be a practical difficulty but can hardly affect the question of necessity for the staff. Assam might perhaps be encouraged to increase their C.I.D. strength so as to include a proposition of officers for such special duties. Assam do not refer to the custody in which suspects are kept while being interrogated. We should perhaps ask for information on this point.

6. The Punjab suggestion regarding the duration of detention for interrogation should perhaps be put to P.G.'s in any further communication to them.

S.J.L. Olver
5-7-43

Bengal reply is important and must be awaited.

S J.L. Olver
17-7-43

Bengal, N.W.F.P. and Delhi replies have been added to the file. A reminder to the remaining provinces is also put up.

2. The summary has been brought up to date. Bengal have not found any necessity for special interrogation centres; nor have they had any difficulty in the matter of providing trained staff for the interrogation from the Provincial C.I.D. They do not propose to adopt our suggestions. The N.W.F.P. reply shows that certain C.I.D. officers function practically as a special staff for interrogation though there are no special interrogation centre. In Delhi the Red Fort apparently forms a special centres though there is no special staff.

S.J.L. Olver
17/7/43

1 Doc 54 Chapter I-B.

2 P.G. Provincial Government.

49 Official Notings reg. interrogation of prisoners (continuation of Doc. 48) — (dt 19.7.43–24.7.43) (extracts)

File No. 44/2/43 – Home Poll (I)
[NAI]

The summary of replies received from Provincial Government may be seen. Though incomplete, important replies are now on the file.

2. We need not concern ourselves here with the question of the conditions of custody of security prisoners under Defence Rule 129. This has been dealt with in detail in another reference to Provinces, the replies to which are still coming in and will be submitted separately when complete. The question at issue on this file is the interrogation of prisoners under rule 129 and the efficiency of Provincial arrangement in this respect. It will be seen that all Provinces claim to be more or less alive to the necessity for thorough interrogation in such cases. The extent to which specialized arrangements have been made for interrogation varies very greatly, however, from the Punjab where special accommodation in Lahore is provided and where interrogation has long been one of the principal police methods of gaining information, through U.P., Bengal, Bombay City and to a lesser extent Madras, where interrogation is largely undertaken by the existing Special Branch staff, to Bihar C.P. and Assam where one may legitimately infer that little if anything is done at all in the way of interrogating these prisoners.

3. Our letter will, I think we may legitimately hope, have roused Provinces to some more adequate idea of the importance of these interrogations. Further practical steps to raise

Provincial efficiency depend almost entirely on staff and I suggest this is now a matter for Police section to pursue with the different Provinces concerned. D.I.B. may see.

S.J.L. Olver.
19.7.43.

Addl. Secy.

I am not sure that we did not make a mistake in confining our letter to 'persons detained under D.R. 129'. It may be equally important to have arrangements for the interrogation of persons detained under D.R. 26 – but there we are up against this difficulty that the Security Prisoners Rules contemplate detention in a jail.

If D.I.B. has any immediate remarks to make on the Provincial Replies we should be glad to have them as soon as possible, since H.M. will no doubt wish to see this file before the end of the week.

R. Tottenham.
20/7/43.

I have been through the replies received to Home Department's Express Letter of May 25th addressed to all Provinces, and confess to a good deal of disappointment with most of them. With few exceptions, none of the Provinces seems to recognise that, although the subject of H.D.'s letter was linked with Rule 129, D.I.R., good interrogation is one of the main pillars of detection in all circumstances, and that, whether in an emergency of the present kind or under more normal condition, it will be to the advantage of provinces to have at their disposal an expert interrogation staff working on scientific lines as the instrument for bringing to light the true facts about crime of all sorts and so providing an additional means to prevention of similar occurrences in the future. Perhaps it is that provinces have shied off the idea conveyed by the word 'centre' and prefer to carry on in their more or less haphazard methods for interrogation when and where necessary. The emphasis might I think, have been on the word 'staff' although experience has shown that there are certain psychological advantages attending to the existence of place known to be set apart for interrogation purposes.

2 There are the making of good interrogation organisations in several provinces, but to my mind the only province which has shown really first class results from interrogation on a systematic basis and with entire disregard to the matter of time taken, is the Punjab. Compared with the Punjab, the rest are nowhere. We cannot very well tell provinces this, and I am uncertain whether there would be any advantage in returning to the charge to insist on Provinces taking the matter more seriously. I propose to discuss the subject thoroughly in the course of my forthcoming tours and will endeavour to bring home to the authorities concerned what they stand to gain by having a scientific set-up for this work. If the delay consequent on giving effect to this proposal is considered undesirable, I will discuss an alternative with Additional Secretary.

(I would be glad to have H.D.'s file back as soon as it can be made available in order to take copies of the replies from Provinces).

Pildich
24. 7. 43.

H.D. (Sir R. Tottenham).

D.I.B. u/o No. 12/D-G/42, dated 24 July. 1943.

I think H.M. would like to see this file at this stage. I would not recommend any immediate action, since I think better progress is likely to be made by the personal discussions contemplated by D.I.B. and possibly by some further general discussion at a forthcoming Security Conference.

R. Tottenham.
20.7.43.

50: Jailal Sahu and others (Petitioners) v. Emperor [Brough and Sinha J.J. (20 July 1943)]

AIR, Vol. 30, 1943, Patna, pp. 346-52

Criminal Revns. Nos 34, 391 to 393, 396, 400, 402 to 408, 410, 413, 415, 427 to 429, 434, 445, 446, 462 and Criminal Misc. Nos 21, 81 to 83, 86, 101 and 107 of 1943, Decided on 20th July 1943

R.K. Choudhury (in 34), P.N. Sanyal (in 391), K.N. Lal (in 392), P.N. Sanyal (in 400), N.C. Ghosh (in 402), S.K. Mitra (in 403), A.N. Chatterji (in 404), M.N. Pal (in 406), M.N. Pal, N.C. Ghosh and B.N. Bhagat (in 407), A.N. Chatterji (in 408), M.N. Pal (in 410), M.N. Pal and N.N. Sen (in 413), R.S. Sinha (in 415), Ganesh (in 427 and 428), Guneshwar Pd. (in 429), Rajeshwari Pd. (in 434), M. Rahman (in 445), M.N. Pal and Kailash Ray (in 446), H.P. Sinha and Kedar Nath Varma (in 462), N.C. Ghosh and B.N. Bhagat (in 24), A.K. Varma (in 81), A.N. Sahay (in 82), A.K. Varma (in 83), A.K. Mitter and Kailash Ray (in 86), S. Moniullah (in 101) and S. Mehdi Imam and P.N. Sanyal (in 107) — for petitioners.

Advocate-General and Assist. Government Advocate — for the Crown.

Brough J. — These applications have been made by a number of persons sentenced under the powers purported to have been conferred by Ordinance 2 of 1942 (Special Criminal Courts Ordinance, 1942) who contend that notwithstanding Ordinance 19 of 1943 (Special Criminal Courts Repeal Ordinance, 1943) their detention is illegal and under S.491, Criminal P.C., seek an order of this Court that they be set at liberty or brought to trial according to law. Ordinance 2 was promulgated on 2nd January 1942 by the Governor-General under S.72 of Sch. 9 to the Government of India Act, 1935. The Ordinance, originally limited by S.72 above to a period of six months, was extended by the India and Burma (Emergency Provisions) Act of 1940 and an Order in Council made thereunder and remained in force until repealed as hereinafter mentioned. The Ordinance was not complete in itself, it came into force (S.1 (3)) in any Province only on notification by the Provincial Government; that notification could be given originally only on the existence of an emergency arising from a hostile attack on India but by ordinance 42 of 1942 promulgated on 19th August 1942 the power was extended to cover an emergency arising from any disorder in the Province. The Provincial Government brought the Ordinance into force in this Province by Notification No. 90CC dated 21st August 1942. Even that notification was not enough to set the Special Courts to work trying cases, as the Ordinance also left it (Ss.5, 10 and 16) to the Provincial Government or a servant of the Crown empowered by the Provincial Government in that

behalf to direct what cases or classes of cases the several Courts should have jurisdiction to try. Under these sections various orders have been made directing the trial of cases by the several Special Courts set up by the Ordinance. It is by these Courts and under these orders that the various applicants have been tried.

The validity of the Ordinance was soon after it came into force challenged in this and other High Courts. There is no need to discuss the cases in detail. This Court decided in 22 Pat. 175 that the Ordinance was not invalid and similar decisions were given by the Courts of Bombay and Asslhabad. On 21st April 1943, however, the validity of the Ordinance having been challenged before it on grounds not taken before any other Court a Special Bench of the Calcutta High Court declared the Ordinance to be ineffective to confer jurisdiction on the Special Courts: A.I.R. 1943 Cal. 285. That decision was carried on appeal to the Federal Court in A.I.R. 1943 F.C. 36 which on 4th June 1943 dismissed the appeal. The effect of that decision was that all the trials which had been held throughout India under the powers thought to have been conferred by Ordinance 2 were found to have been without jurisdiction. Consequently on the next day 5th June 1943 the Government of India Published Ordinance 19 of 1943. The question for determination in these cases is simply what, if any is the legal effect of Ordinance 19. On 12th July 1943 while this case was being argued the Calcutta High Court gave a decision on a similar point but no report of the judgement except those in the daily press was available up to the time the argument was concluded and the Court did not think it necessary or desirable to postpone the decision in these cases on that account. Ordinance 19 begins with the following preamble:

Whereas an emergency has arisen which makes it necessary to repeal the Special Criminal Courts Ordinance 1942 and to provide for certain matters in connexion with such repeal

and then follow five enacting sections purporting to be made and promulgated by the Governor-General under S72 of Sch. 9, Government of India Act, 1935. Section 1 brings the Ordinance into effect at once: Section 2 repeals Ordinance 2 of 1942: Section 3 deals with cases the trial of which under Ordinance 2 had been concluded: Section 4 declared all pending proceedings under Ordinance 2 to be void and transferred them to the appropriate Magistrate for disposal according to the ordinary law: Section 5 granted an indemnity to servants of the Crown for acts done under powers purported to have been conferred by Ordinance 2. It is S.3 which is material for the present cases and it reads as follows:

3. Confirmation and continuance, subject to appeal, of sentences. - (1) Any sentence passed by a Special Judge, a Special Magistrate or a Summary Court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of this sections, shall continue to have effect, as if the trial at which it was passed had been held in accordance with the Code of Criminal Procedure, 1898 (5 of 1898), by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the First Class respectively, exercising competent jurisdiction under the said Code. (2) Notwithstanding anything contained in any other law, any such sentence as is referred to in sub-section. (1) shall, whether or not the proceedings in which the sentence was passed were submitted for review under S.8, and whether or not the sentence was the subject of an appeal under S.13 or S.19 of the said Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under the said Code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance. (3) Where any such sentence as aforesaid has been altered in the course of review or on appeal under the said Ordinance, the sentence as so altered shall for the purposes of this section be deemed to have been passed by the Court which passed the original sentence.

As the decision of the Federal Court in A.I.R. 1943 F.C. 36 was the effective cause of the promulgation of ordinance 19, so it will also be the most important factor in determining its validity. It will, therefore, be convenient at the outset to see what the Federal Court did and did not decide. It did not decide that the whole Ordinance was beyond the legislative powers of the Governor-General under S.72 although the majority of the Court (Varadachariar C.J. and Zafrullah Khan J.) stated that the arguments on this point raised substantial and important questions. There being no decision of the Federal Court on this point it is so far as this Court is concerned concluded by the decision of the Special Bench in A.I.R., 1943 Cal. 285. What the Federal Court decided as I understand the judgment of Varadachariar C.J. who delivered the judgment of the majority (Rowland J. dissented)¹ was that it was only the executive orders made under Ss.5, 10 and 16 of the Ordinance that outside the jurisdiction of the High Court and abrogated the operation of the Criminal procedure Code (particularly Ss.5, 28 and 29) and that such executive orders could not have such effect in law and that therefore Ss.5, 10 and 16 of the Ordinance were beyond the legislative powers of the Governor-General with the result that all trials purported to have been held under the Ordinance had been without jurisdiction. That judgment created a situation in which some action by the legislative authority was essential. Ordinance 19 makes provision for the trial of all future cases (including pending cases) under the ordinary law and for indemnity to Government servants for past acts; the propriety of these provisions has not been questioned. The Advocate-General further contended that it had obviated the necessity of a retrial of every case the trial of which had already been concluded, while meeting the objections which had been raised in the course of the argument before the Federal Court owing to the deprivation of the right of appeal. It is argued however on behalf of the petitioners that the Ordinance has not succeeded in achieving this object for reasons which fall into three main classes; it is said first that legislation of this type is ultra vires, secondly that this particular legislation is ultra vires and thirdly that as a matter of construction this Ordinance is ineffective.

It will be convenient to deal with the last and narrowest point first. For this purpose it is to be assumed that the Ordinance is not open to objection on the ground that it or any material part of it is beyond the Legislative powers of the Governor-General. It appears that my view on this point differs from that which I understand found favour with the majority of the Calcutta High Court. I therefore express the opinion I have decidedly formed with some diffidence, although I derive some comfort in that on this point. I am, I think, in agreement with Sen J. I find S.3 perfectly clear and but for the arguments which have been addressed to us and the decision of the Calcutta High Court I would have contented myself with saying that it means what it says. I will however try to elaborate though not I think to improve the language of the section: 'The sentence of a Special Court notwithstanding that it had no jurisdiction to pronounce it, shall have the same effect as an equivalent sentence passed by a competent Court at a trial held strictly in accordance with the provisions of the Criminal Procedure Code and shall continue to have such effect subject to the proviso that the sentence may be considered and affirmed, reduced, set aside or enhanced, on appeal or in revision by the same Court and, on the same grounds, as if it had been passed by a competent Court at a trial held in strict accordance with the Criminal Procedure Code.'

It is said that to give legal effect to the sentence alone without dealing with the trial and conviction is ineffective. As between the Crown and the prisoner it is the sentence and the sentence only that matters: the question is whether the Crown is entitled to hang, imprison or fine these petitioners as the case may be, or is it not? If the Ordinance does no more than

give the Crown a right to bring these petitioners and others tried under Ordinance 2 to trial under due process of law it does nothing. That right exists independently of these Ordinances in regard to any person who is properly chargeable with the commission of an offence. These trials were without jurisdiction so that no person tried at any of them could plead either his previous conviction or acquittal as bar to a future trial unless S.3 of Ordinance 19 has, as I think it has, given him a right to plead his sentence as a bar under S.403, Criminal P.C., to future proceedings. I conclude therefore that S.3 does give legal effect to the sentences subject to the right of appeal and liability to revision. It is then said that, although the sentence is legal, as the trial at which it was passed was not held in accordance with the Code of Criminal Procedure, as soon as it is brought before the appropriate Court in appeal or in revision it must be quashed. The point is a short one depending solely on the meaning of a dozen words in this Ordinance; the material words are be subject to such rights of appeal . . . and to such power of revision . . . as if the sentence had been passed at the trial held in accordance with the Code of Criminal Procedure.

To my mind to hold that it is open to the appellant or petitioner to say on appeal or in revision that the trial was not in fact held in accordance with the provisions of the Code of Criminal Procedure and that therefore the sentence must be quashed is to give no effect to the last clause of the words I have just quoted. For all purposes, it must be assumed that the trial at which the sentence was notionally passed was held in accordance with the provisions of the Code. I certainly do not say the Court may not exercise its inherent jurisdiction to set aside a sentence if the prisoner is not shown to have had a fair trial, but technical objections that this or that section of the Code have not been complied with cannot be entertained. Assuming the Ordinance to be in other respects valid, I do not conceive it to be the duty of this Court to give General directions for a retrial of the petitioners. Retrial would be a question for the Courts sitting in appeal or revision after consideration of the merits of each case as I do not think a retrial should be ordered merely because the Special Courts did not conform to the Code of Criminal Procedure, so that the sentences are not based on a legal conviction.

In this connexion a special objection was raised by Mr Awadhesh Nandan Sahay in Criminal Miscellaneous cases Nos 81, 82, 83, 86 and 101 of 1943. The petitioners in these cases had been sentenced to death and Mr Sahay contended that their case was not covered by S.3 of Ordinance 19 and therefore there was no course open to the Court but to make an order under S.491 (a) of the Code, directing them to be brought to trial according to law. Section 3 provides that the sentence of death is to have effect as if it had been passed by a Sessions Judge at a trial held in accordance with the Code. By virtue of Ss.31 (2) and 374 such a sentence so passed is of no effect until confirmed by the High Court. Section 3 makes no reference to confirmation, it might perhaps have been better if it had, but I do not think the omission is material. An appeal or application in revision does not follow automatically from a sentence, and therefore the right to appeal and the liability to review had to be expressly conferred. But under the Code what is generally known as a 'death reference' follows automatically on the passing of a death sentence by a Sessions Judge. I see no reason why the same consequence should not follow from the sentences which are to have effect as if they had been so passed by a Sessions Judge. It is objected that there is no one to make the reference as the Special Judge has ceased to exist, but the Code does not lay down who is to submit the proceedings to the Court and I see no reason why the proceedings should not be submitted by the person who happens to have custody of them. I therefore hold that, if it legally can, the section does have the effect contended for by the Advocate-General.

It is convenient at this point to deal with two points outside the main line of argument Mr Chakraborty, whom we permitted to address the Court although the case in which he had been instructed had been withdrawn, submitted that S.3 (1) of Ordinance 19 was repugnant to S.2 (the repealing section). I can see nothing in that point. In the first place, S.2 is really only a gesture of courtesy to the Federal Court as after their decision there was nothing effective to repeal and secondly, the Ordinance was purely procedural and the repeal of a procedural statute cannot affect matters concluded at the date of the repeal. All that S.3 (1) required was that the sentences referred to should be ascertainable, and that they clearly are. Mr M.N. Pal argued that Ordinance 19 did not apply to pending cases' by which he meant cases in which the sentenced person had filed an application under S.491 which had not been disposed of by 5th June 1943. He did not apparently include persons who had filed such applications which had been, as is now known, wrongly dismissed by various High Courts who had not the advantage of the argument addressed to their brethren in Fort William. The Ordinance is retrospective or nothing; its terms are to my mind precise on this point 'Any sentence passed', I see no reason to exclude 'the case of persons who had filed applications under S.491. It remains to consider the more important and difficult point of the constitutional validity of the Ordinance. The division of the objections into general and particular is perhaps not strictly scientific but it is sufficiently accurate to be useful. The general objections are based on Ss.210 and 212 and on S.202, Government of India Act, 1935.

First it is said that the decision of the Federal Court in A.I.R. 1943 F.C. 36 is an absolute bar to legislation by any legislative authority in India on the same subject. That proposition is too wide. The true proposition is that a decision of the Federal Court in a constitutional matter (not being a question of conflict between different Legislatures) having been given on certain premises no Legislature can enact legislation which will affect the validity of the premises but if the same or similar results can be reached by legislation the validity of which depends on different premises the previous decision will be no bar. In other words, a Legislature may, if it can, get round the decision but may not override it. This objection therefore on examination proves to be a particular objection and not a general one and I will return to it in due course.

Secondly, it is said that as S.3 of Ordinance 19 is repugnant to the Code of Criminal Procedure and does not alter, repeal or amend it in express terms, it is therefore invalid by virtue of S.202, Government of India Act, 1935. No authority was quoted to support that proposition and I can find no warrant for it. Ordinance 2 attempted not a general repeal of the Code but to make it inapplicable to certain cases, and the intention of Ordinance 19 is the same. All that could have been done therefore would have been to insert some such words as 'Notwithstanding anything in the Code of Criminal Procedure'. I am not prepared unless constrained by authority and none has been referred to, to hold the insertion of these words essential, if the meaning of the enactment is clear without them. It is true these words were used in the United Provinces Regulation of Remissions of Rent Act, 1935, which was considered by the Federal Court in 1940 F.C.R. 110 but the Court gave no indication that they were essential to the validity of the Act. It was admitted that had the Code been an enactment passed after the coming into force of the Government of India Act, 1935, this argument would have been untenable. The argument is based only on S.202. But that section is only providing in terms for the continuance of the law in force before the Act, and making applicable to it the principles which will apply automatically to all law made after the Act and I must hold that pre-Act law can be modified by repugnancy just as post-Act law can be.

It was faintly argued that the Governor-General under S.72 of Sch. 9 had no power to

repeal, or modify any existing law. If that were so, S.72 would be practically useless because the field of human experience is nowadays so well covered by legislation that it is almost impossible to devise a new law which does not to some extent cover the same ground as an existing one. In my opinion, however, that contention is contrary to the plain words of the Act which says that an Ordinance under S.72 'shall have . . . the like force of law as an Act passed by the Indian Legislature'. The Indian Legislature may by Act repeal or modify an existing law and therefore the result of S.72 is that the Governor-General may by Ordinance do the same. This view is in accordance with what I understand to be the view of the Federal Court in A.I.R. 1943, although the point did not actually arise having regard to the decision on another point and is that adopted by the Special Bench of this Court in 22 Pat. 175. I hold therefore what I have called the general objections to the validity of the Ordinance to fail.

Finally I turn to consider the particular objections to this piece of legislation. It is to be borne in mind that the pronouncement of the Privy Council in (1878) 3 A.C. 889 that within their own sphere the powers of the Indian Legislature are as large and ample as those of Parliament itself is still good law notwithstanding the Government of India Act 1935 and the burden of shewing the existence of some restriction is on those who assert it, this was laid down in 1940 F.C.R. 1106 which decided there was no objection to retrospective legislations per se. The true effect of S.3 (which is the only one material) is, as I have already held, to direct the execution of sentences and provide for appeal and review in an ascertainable number of specific cases which were determined in good faith but in fact without jurisdiction under the ordinary rules of substantive law and evidence though not of procedure by persons who were selected from among the officers ordinarily exercising judicial functions in criminal matters. It is said to be invalidly enacted on a number of grounds which are substantially distinct.

First it is said that under S.72 the legislative powers only arise on the existence of an emergency and that there was no emergency. The Governor-General whose words I have already quoted has declared that an emergency has arisen necessitating the ordinance. In my opinion, in face of that declaration, the decision of the Privy Council in 58 I.A. 169 precludes this Court from either enquiring whether an emergency exists or whether the Ordinance is conducive to the peace and good Government of British India and apt to meet the emergency.

Secondly it is said the legislation was merely a colourable device to flout the decision of the Federal Court and therefore void on the analogy of the order of the Punjab Government considered in A.I.R. 1943 Lah. 41. This argument too seems to me untenable. The Ordinance goes a long way to meet the criticisms made on Ordinance 2 of 1942. It makes no attempt to perpetuate the special Courts as it would appear it could have done by suitable provisions and as to the past it restores the jurisdiction of the High Court the absence of which formed the principal, though not the only, ground of complaint against the system set up by Ordinance 2. It seems to me impossible to say it is merely a colourable device.

Thirdly it is said the subject matter of the Ordinance is not within the powers of the Federal Legislature under S.100, Government of India Act, 1935 and therefore not within the legislative powers of the Governor-General under S.72 of Sch.9. In other words, that the subject matter of the Ordinance is not comprised in any one of the three lists in Sch.7. This objection was perhaps the most strongly urged and at the same time the most unreal of all objections put forward. It is admitted that a proclamation under S.102 having been made all three lists are equally now the field of the Federal Legislature and that if any subject matter is omitted from the totality of the three lists the Governor-General may under S.104 bring it in and allot it to a list. If therefore the subject matter of this Ordinance is not to be found in Sch. 7 the

Governor-General can in the exercise of his discretion put it there and it will make no difference for this purpose which of the three lists he selects.

In my opinion however it is covered by the item Criminal Procedure (Item 2 in List III). Ordinance II of 1942 was clearly 'Criminal Procedure'. It was argued by Mr Baldeva Sahai for certain petitioners that as the procedure under which the sentences were passed was invalid the execution of such sentences is not a matter of Criminal Procedure. If the trials had been valid, execution of sentences is clearly a matter of 'Criminal Procedure' as it is the subject matter of one of the chapters of the Code of Criminal Procedure. I do not think the expression can be so narrowly construed as is contended. I see a very real and important difference between a sentence passed by mere executive act and one passed after an investigation before an officer purporting to exercise judicial functions and to decide judicially. This Court has only to decide on the circumstances of the case before it; howsoever difficult it is to draw an exact line between two opposites it is often not so difficult to determine which side of the line a particular case falls. In my judgment the giving of directions as to the execution of these sentences and the hearing of appeals and revision application arising out of them is a matter of Criminal Procedure.

The Advocate-General further contended that in any case the Governor-General's powers under S.72 of Sch. 9 are not limited by S.100 of the Act. He referred to the history of the section starting with the East India Council Act of 1861 and the Government of India Act, 1915 and the amendment to that Act made in 1919. Under the 1915 and 1919 Acts; the 'restrictions' referred to in S.72 of that Act appear to have been limited to those imposed by S.65 (2) and (3). These restrictions are in part repeated in S.110 (b), Government of India Act, 1935 (S.65 of the earlier Act not being one of those continued). The 1935 Act however clearly imposes new restrictions beyond those of S.110 (b) for instance S.112. The power of the Indian Legislature by reference to which the 'restrictions' referred to in S.72 of Sch. 9 are imposed is given by reference to the power of the Federal Legislature (S.316). The restrictions on the power of Federal Legislature are wider than those on that of the Indian Legislature under the repealed Act. These restrictions in my view include S.112 and equally and other section in fact constituting a restriction. Among these I must include S.100. I might add that in all the cases in which the validity of Ordinance 2 has been challenged this point has been assumed although it never became necessary to decide it.

Fourthly, it is said that it is a cardinal feature of the Indian constitution that the legislative and judicial functions should be distinct and accordingly that the Legislature cannot act as a judge. For the purposes of this case, I would accept this proposition which I am inclined to think is correct. In my view, however, to direct the execution of a sentence determined after investigation by another person is not to exercise judicial functions. The question to be determined by the Governor-General in his legislative capacity was whether having due regard to the peace and good Government of the country the totality of the investigations which had taken place were so contrary to the principles of justice that even with rights of appeal and liability to revision, it would be inexpedient to use them as a basis for the subsequent execution of sentences. I cannot see how that can be described as the exercise of judicial function. The Ordinance, in my opinion, gives legislative force to an executive act which is a proper exercise of legislative functions.

Lastly, it is said that this Ordinance is invalid by virtue of the decision of the Federal Court in A.I.R. 1943 F.C. 36. This, I think, is the crucial point. The principles which I endeavoured to enunciate in an earlier part of this judgment are clear enough, it is the application of them

to the particular case which gives rise to the difficulty. As I understand the judgment of the Federal Court, it was the delegation of the power to bring the Ordinance into effective operation in practical effect of Ordinance 19 is that the legislative authority ratifies the invalid acts of the officers of the Crown. Ratification is a familiar legal conception and of course, it is not possible to ratify an act which is ultra vires of the ratifying body. If authority is needed I would refer to (1875) 7 H.L. 653. But the Federal Court did not decide that it was ultra vires to set up Special Courts and give them jurisdiction. It was the method of giving them jurisdiction which was ultra vires. I see no reason therefore why if it can avoid the error of method the Legislature cannot ratify the invalid acts. The legislative authority has in this case applied its own mind to the case covered by the new Ordinance which are specific ascertainable cases. Therefore, in my opinion, the ratification is effective and the new Ordinance is not made invalid by the decision of the Federal Court on the old one. I might observe that the contrary view of Sen J. is based on the assumption that the whole of Ordinance 2 is invalid. As I have already stated, I am bound by the decision in 22 Pat. 175 to hold the contrary. Sen J.'s views do not therefore help me.

Much argument was addressed to us about the words, trial, conviction and sentence. This is not a question of words. I do not think either that by verbal dexterity the difficulties of ultra vires have been avoided or that from verbal infelicities nothing effective has been achieved. Having given the matter the best consideration I can, I am of opinion, that the substance of the Ordinance that is to say, the execution of the sentences passed by the Special Courts, subject to such modification as may be made on the merits on appeal or in review, has been expressed with sufficient clarity and is not ultra vires. I would, therefore, dismiss these applications. A certificate is granted under S. 205, Government of India Act, 1935, so that the petitioners or any of them who so desire may appeal to the Federal Court.

Sinha J. — I agree.

Applications dismissed.

R.K.

I Doc. 34 in this Chapter

51: The Governor of Bihar to the Viceroy

Linlithgow Collection

[NAI - Acc.. No. 2385]

From H.E. Sir Thomas Rutherford, K.C.S.I., C.I.E., Governor of Bihar.

July 20th 1943.

[Secret.]

D.O. No. 556-G.B.

Dear Lord Linlithgow,

I enclose a copy of the Chief secretary's report for the first half of July.

2. *Law and Order* — Following shortly on the attack on the Railway Station and post office

at Bidhupur in Muzaffarpur district has come an attack on the 16th of this month on the post office at Jamdaha in the same district by an armed band. The method of attack suggests that the C.S.P. is behind these outrages. I have just received a report that Sia Ram Singh, an important leader in the South Bhagalpur dacoity campaign, on whose head is a reward of Rs 5,000, appeared on the 14th with followers, numbering about 10, before an Inspector, Sub-Inspector and Constable who were busy investigating a house-breaking case, and announced who he was, after telling the villagers who had been watching the police proceedings to clear off. The Inspector made a half-hearted attempt to arrest him, but was easily thrown off. The Inspector and Sub-Inspector were foolish in going into this area unarmed even though they were on ordinary police work. The villagers though summoned to assist gave no help, and it is proposed to levy a collective fine. It is an unfortunate incident, but it shows what a good intelligence system Sia Ram has.

The police this time of Patna district have again successfully ambushed party of dacoits. They caught them on the 15th in the act of attacking a house. Two were killed and seven are in hospital in a precarious condition.

Of the two dead dacoits one is a village chaukidar.

The Patna High Court (the same Judges as I mentioned before) have issued a notice to Government in connection with an appeal against a conviction under the Special Criminal Courts Ordinance, to show cause why Defence of India Rule 130-A should not be declared *ultra vires*. There is no mention of this matter in the appeal petition. Intimation has been sent to the Home Department of this new move.

I have written to you separately about the R.A.F. murder cases. I have also been looking into another case of the looting of a police station which seems to have been lost by investigation, delays and bad supervision.

3. *Agrarian* – Whatever may be the state of the towns and labour not employed by the State and big employers, the landholders who get their rents in kind and the cultivators who have sufficient land to live off are flourishing. Agricultural Income-tax shows considerable increase in a number of districts. Large numbers of mortgages are being paid off and I note that, even in the Chota Nagpur Division, prices of land are reported to be almost double.

[Omitted: Two paragraphs dealing with the food situation.]

Yours Sincerely,

T.G. Rutherford.

1. Not printed.



52: Governor of Bihar to the Viceroy

Linlithgow Collection

[NAI - Acc.. No. 2385]

From H.E. Sir Thomas Rutherford, K.C.S.I., C.I.E., Governor of Bihar.

July 20th, 1943.

[Most Secret & Personal.]

No. 562-G.B.

Dear Lord Linlithgow,

My last letter to Your Excellency about the Ainsworth case was dated the 22nd March.¹ I have now received information that the criminal proceedings instituted against Ainsworth by the brother of the deceased man have been discharged under Section 4 (a) of the Indemnity Act. The way being thus clear for recording a departmental censure, the Chief Secretary has written to the Inspector-General of Police a letter approved by me of which I enclose a copy. In this letter no direct use has been made of the Commissioner's enquiry into the incident because, as Your Excellency will remember, we are anxious to maintain the secrecy of that document and to insure against its use in any future judicial proceedings which might still occur if the order of discharge were challenged in the High Court. A General reference has however been made at the beginning of the letter to the Commissioner's findings.

2. Ainsworth has recently made a formal application for transfer to the North-West Frontier Province, and I have given direction that this application may now go forward.

3. After a decent interval has elapsed, I propose to have confidential enquiries made into the circumstances in which dependents of the deceased man have been left and then to consider whether any *ex gratia* payment should be made to them.

Yours Sincerely,

T.G. Rutherford.

[125 (25)-A.-G.G.-42.]

[Enclosure.]

[Confidential.]

No. 1961 -C.

Government of Bihar, Political Department. (Special Section.)

From Y.A. Godbole, Esq., C.I.E. I.C.S., Chief Secretary to Government.

To The Inspector-General of Police, Bihar.

Ranchi, July 19th, 1943.

Sir,

I am directed to address you regarding the incident which occurred at Arrah on the 20th September 1942 resulting in the death of a prisoner in 'Police custody'.

2. Government have carefully considered the report of the Magisterial enquiry under Section 176, Criminal Procedure Code, and the findings of the Commissioner of the Patna Division.

The admitted facts are that four persons were arrested by sowars of the Military Mounted Police near the Collectorate while engaged in shouting slogans and distributing subversive leaflets. They were taken to the residence of Mr Ainsworth, Assistant Superintendent of Police, where he interrogated them with the permission of the Superintendent of Police. Mr Ainsworth in his statement before the Magistrate admits that as the prisoners refused to speak he caused them to be beaten with canes on the buttocks, both by himself and by sowars of the Military Mounted Police under his orders, until information was obtained from them which later led to the seizure of a depot for the dissemination of subversive propaganda. The prisoners were then taken to the thana and from there to the jail in a motor truck. On the way prisoner Kailashpati Singh collapsed and on arrival at the jail the Medical Officer found him to be in a very serious condition and sent him to the Sadr hospital. Before reaching the hospital the prisoner expired. *Post mortem* examination revealed that, apart from marks of beating on the buttocks, three of his ribs and two metacarpal bones of one hand were broken.

3. The prisoner was in police custody from the time of his arrest to the time of his death and these injuries were therefore inflicted while he was in such custody. The evidence indicates that the injuries were not inflicted before he reached the Assistant Superintendent of Police's bungalow. It is clear that the more serious injuries were not caused by beating with canes and that the accused suffered other violence beyond that which Mr Ainsworth and the sowars of the Military Mounted Police have admitted. The violence which caused the fatal injuries to Kailashpati Singh could have occurred either during the course of the interrogation at Mr Ainsworth's bungalow or during removal by the police to the thana and jail. The three other fellow prisoners of Kailashpati Singh speak of having been beaten with sticks or *lathis*, *slaps* and fist-blows. But none of them were able to say who were the persons who beat Kailashpati Singh and only one of them was able to identify any of the police who took part in the affair. These witnesses also speak of maltreatment in the truck while they were being taken to the thana and jail. Further enquiry has not thrown any added light on the affair. The evidence on record, therefore, establishes that these four persons were beaten on the buttocks under the orders of Mr Ainsworth but does not establish when, how or by whom the more serious injuries which proved fatal to Kailashpati Singh were inflicted. It does indicate that Mr Ainsworth was not present throughout the whole transaction and there is no evidence that these particular injuries were caused in his presence. But it is clear that they must have been inflicted either by the police or troops who were present during the interrogation and removal to the thana and jail.

4. Mr Ainsworth was the officer directing the interrogation and he was responsible for the safe custody and treatment of the prisoners in his charge. He himself ordered and took part in the beating of the prisoners in order to extract information and seems to have shown himself reprehensibly callous as to how they were treated by his own men or others. Government are unable therefore to absolve him from responsibility for this unfortunate incident. If it had occurred in normal times there would have been no alternative to dismissal. But in considering Mr Ainsworth's action they have borne in mind the exceptional conditions of the time. Mr Ainsworth was engaged in the task of restoring order in the face of a rebellious outbreak of unprecedented magnitude and was working in circumstances of considerable strain, difficulty and personal danger. Government therefore do not consider that it would be fair to judge by ordinary standards actions which, reprehensible though they are, were done in the heat and

stress of the moment. They are also mindful of the fact that Mr Ainsworth throughout the operations against rebels displayed courage, initiative and leadership of a high order and that he contributed very largely to the restoration of order in the district. These meritorious services must count in mitigation of conduct which has prevented the recognition of his services that might otherwise have been made.

5. Government have decided therefore to exercise clemency in this case, and to take no further action beyond recording their grave displeasure at the impropriety of Mr Ainsworth's conduct and at the callousness displayed by him and the men under his orders.

6. I am to request that this censure be communicated to Mr Ainsworth.

7. Government leave the conduct of the sowars of the Military Mounted Police who were concerned in this affair to be dealt with by you, as the disciplinary authority in respect of them vests in the Inspector-General of Police.

I have the honour to be,
Sir,
Your most obedient servant,
Y.A. Godbole,
Chief Secretary to Government.

1 Not printed -- Doc 17 may be seen in this connection.

53: Government of India to all provinces (treatment of security prisoners)

File No. 44/37/43 - Home Poll (I)
[NAI]

Government of India,
Home Department.

Express Letter

From
Home, New Delhi.

To
All Provincial Governments and
Chief Commissioners, Delhi,
Ajmer-Merwara Coorg and
Baluchistan.

No. 44/37/43 - Poll (I)

New Delhi, the 21st July 1943

[Omitted para¹ -- Ed.]

2. As you are doubtless aware, we are under continual pressure, which is renewed with each successive session of the Legislature, to liberalize the conditions of detention of security

prisoners. We have so far resisted this pressure. Our stand has been based on the view that the Government of India could not be expected to intervene in matters of detailed treatment of security prisoners in Provinces and that their general responsibility for the administration of the Defence of India Rules, and of security prisoners detained thereunder, was satisfied provided that they ensured that uniform standards were maintained in matters of importance. The validity of this stand depends of course on the extent to which provincial Governments do in fact adhere to our principles in their treatment of security prisoners, and to the extent that the principles laid down do in fact cover all matters of real importance concerning the treatment of security prisoners. On the first point, we believe that considerable divergences of practice in respect of these matters of principle have been allowed to creep in; we would repeat the request made in our letter of the 21st January, 1942, that these principles, which we consider hold equally good today, should be accepted by Provincial Governments and that if you find any difficulty in accepting them, you should refer the matter to us without delay. In the attached Memorandum we indicate some of the directions in which we understand that Provincial practice has diverged from our principles. On the second point, we consider that correspondence and interviews, neither of which were treated as matters of principle in our Memorandum of 21st January, 1942, should now be so treated; we think further that principles should be enunciated embodying the views we have from time to time expressed on the separate treatment of Congress security prisoners; and the succeeding paragraphs of this letter lay down the further principles which we propose to adopt.

(3) *Interviews*, We remain of the opinion expressed in our letter No. 44/6/42 – Poll (I) of 20th February, 1943,¹ in which we inclined to the view that, since letters to near relatives were already allowed, interviews with such relatives on personal and domestic matters would do little harm provided that jail administration was strict and the interviews were properly supervised. We still feel, however, that at the present stage, we cannot press Provincial Governments which desire to maintain the existing restrictions to relax them; and we cannot at present insist, as a matter of principle, on uniformity of practice in this respect.

Addl. Secy. to the Government of India.

No. 44/37/43 – Poll (I).
New Delhi, the 21st July 1943.

Copy is forwarded for information to:

1. Secretary to the Governor-General (Personal)
2. Secretary to the Governor-General (Public).
3. External Affairs Department.
4. Political Department.
5. Director, Intelligence Bureau.

By order,

Au. (30/21-7-43)-D.

Under Secretary to the Government of India.

Memorandum

Divergences of practice in respect of matters of principle regarding the treatment of security prisoners laid down in the Memorandum attached to Home Department letter No. 43/46/41 – Poll (I), dated 21st January 1942,² and in Home Department letter No. 44/37/43 – Poll (I), dated the 21st July 1943.

1. *Segregation.* In our Memorandum of 21st January 1942, importance was attached to the principle of complete separation of security prisoners from all other classes of prisoners. It is understood that, in the Central Province, security prisoners are in some cases allowed to mix with convicted prisoners.
2. *Diet allowances.* The principle laid down in our Memorandum of 21st January 1942, was that the diet of class II security prisoners should be a distinct improvement on that of 'C' class convicted prisoners. It is understood that class II security prisoners are in the Punjab, Bihar, Central Provinces and Sind treated in matters of diet as on a par with 'C' class convicts.
3. *Personal allowances.* Our Memorandum of 21st January 1942 opposed on principle the grant of personal allowances to security prisoners. It is understood that personal allowances have been granted to five Congress security prisoners in Assam.
4. *Receipt of funds from external sources.* Our Memorandum of 21st January 1942 laid it down as a principle that the legitimate needs of security prisoners in the way of extra amenities should be met by allowing them to receive limited funds from outside sources. It is understood that class II security prisoners in the United Provinces, both Congress and non-Congress, are not allowed to receive such funds; and that in the Punjab the purposes to which Congress security prisoners may put such funds are restricted.
5. *Family allowances.* Our Memorandum of 21st January 1942 set forth a formula for the liberalization of the grant of allowances to security prisoners' families. As far as can be judged, in what is admittedly a matter of degree, our views have only been fully accepted and put into practice in Madras, the United Provinces and the Punjab. It is important that a clear distinction should for this purpose be made between the treatment to be accorded to the families of Congress and non-Congress security prisoners.
6. *Parole.* We have no detailed information of the extent to which the principle laid down in our Memorandum of 21st January 1942 and reiterated in our letter No. 44/29/43 - Poll (I) of 6th May, 1943,¹ has been put into practice in provinces. We have, however, recently received a representation from a Province in which conditions for the grant of parole set forth in our letter of 6th May, 1943, are being strictly interpreted, urging the need for greater uniformity in the practice of the various Provinces in this respect and pointing out the embarrassment caused by the absence of such uniformity. Instances were quoted where other Provincial Governments had released security prisoners on parole, in one case for a period of over six months, and in another case for the performance of the Sraddh ceremonies. It is difficult to give more detailed guidance than already given in our letter of 6th May. But it is suggested that as a General rule, release on parole to attend religious or social ceremonies would not be in accord with the principle laid down in our Memorandum. (Central Provinces Government letter No. 1745-1395-III of 8th July, 1943, refers).

1 Doc 19 in Chapter I B

2 Not printed.

3 Not printed.



54: Government of India to all Provincial Governments (Anticipatory action for 9th August celebrations and the use of martial law)

File No. 3/68/43 – Home Poll (I)

[NAI]

Government of India,
Home Department.

Express Letter

From
Home, New Delhi.

To
All Provincial Governments and
Chief Commissioners except Panth-Piploda.

No. 3/68/43 – Poll (I)

New Delhi, the 24th July 1943.

Subject: Action in the event of revival of serious disorders.

Your Government is no doubt aware of the probability of demonstrations and the possibility of renewed disturbances on the anniversary of the Congress arrests on August 9th and is taking such precautionary and other measures as it considers necessary. A summary of the more important information at our disposal in this context is communicated to provincial Criminal Investigation Departments and Special Branches with the Weekly Intelligence Summary issued by the Director, Intelligence Bureau, and any important information that may become available to us during the last week before August 9th will be communicated to you immediately. Our general view, on the information at present available, is that, although certain plans of action are being mooted, the driving force behind them is not widespread or influential. These plans emanate mainly from the important leaders of the Congress Socialist party who are still at large; the public support for these leaders does not appear to be large or increasing; and the chances of any organized and widespread trouble do not, therefore, appear to be very great. On the other hand, the possibilities of local disorders, perhaps in a considerable number of places, cannot be altogether dismissed and we cannot risk any recrudescence of trouble on the scale of 1942 to which such local manifestations of disorder might eventually lead.

2. All Provincial Governments will, no doubt, use the forces at their disposal to deal with any disturbances that may arise and will not hesitate to enlist military aid if the disorders show any signs of spreading or of passing beyond the power of the Police to suppress. Further, the experience of the last rebellion demonstrated the need for the prompt arrest and trial of offenders, and also, in certain areas, the necessity for the exercise by local officers of certain extra-legal powers to secure the early restoration of order, thus necessitating subsequent indemnity legislation. On the other hand, developments in the Courts regarding the use of the powers of detention without trial have pointed to the desirability of prosecuting as many

persons as possible for substantive offences instead of detaining them under Defence Rule 26. In our opinion the use of this rule should be restricted, as far as possible, to the detention of persons who commit no overt acts themselves but are known to be organizing or inciting others to do so. An additional point of importance is that the Special Criminal Courts Ordinance is no longer available for the speedy trial of offences and our examination of the general position has led us to the conclusion that any legal provision (such as that, for instance, included in the Defence of India Act) for the trial of a wide or unspecified range of offences by special procedure would be open to objections of the same kind as were held by judicial authority to apply to the Special Criminal Courts Ordinance.

3. We are still examining the question of drafting an Ordinance which would secure the objects in view without being exposed to these objections; but our provisional view in the light of all these considerations is that, if disturbances arise on a scale comparable to what occurred in Bihar and the Eastern Districts of the United Province in August 1942 and it appears improbable that the Police supported by such military aid as may be available will be able to control the situation within a reasonably short space of time, the wisest course would be to consider the proclamation of martial law in conjunction with the Military Commanders concerned. The circumstances in which a proclamation of martial law would be justifiable and the procedure to be followed in that event, have been fully explained in the late Defence Coordination Department's letter No. 767-OR/41, dated 20th February 1943; and it is recognized that the use of martial law cannot properly be regarded as a matter of convenience, or merely as a precautionary step to prevent trouble, or to avoid the legal difficulties which have attended the application of emergency powers in the past. Recourse to martial law must remain a last resort. On the other hand, it will probably be agreed that the situation in various areas last year had in fact become so out of hand as to justify the introduction of martial law, and it is felt, that the repetition of such a situation should be avoided by a readiness on the part of the civil authorities, acting, of course, in the closest possible consultation with the local Military authorities, to agree to the taking of that step at the earliest moment at which the circumstances justify it.

4. It will be realized that, if martial law is to be established, it will be necessary to maintain it for sometime after the disturbances themselves have been quelled, until the Military tribunals have cleared off the pending trials of offences which occurred under that regime, and also that the Military authorities will require some time to make the necessary arrangements for the noting up of Military Courts for the trial of those offences. We do not suggest that it will be necessary in advance to make any elaborate arrangements for these purposes but we trust that all provincial Governments will accept the principle of the policy suggested above and will keep in the closest possible touch with the Army Commands, with whom they should discuss the possibilities of martial law being required in particular areas and the arrangements that would be necessary in that event.

5. The foregoing paragraphs have particular reference to the possibility of disorders on or about the anniversary of the outbreak of Congress rebellion. It need scarcely be added that there are other circumstances which may supervene at any time, which may afford to the ill-disposed even greater opportunities for causing serious trouble. Offensive or defensive operations against the Japanese the spontaneous occurrence of food riots in certain areas or possibly, a fast by Mr Gandhi and its fatal termination, might well provide such opportunities. We trust, therefore, that the policy outlined above will receive the serious consideration of Provincial Governments, even apart from the risks of widespread disorder in the near future;

and we should be glad to receive an expression of your views in the matter at the earliest possible date.

R. Tottenham
Addl. Secy. to the Government of India.

No. 3/68/43 – Poll (I)
New Delhi, the 24th July 1943.

Copy forwarded to . . .

Secretary to the Governor General (Personal).
Secretary to the Governor-General (Public).
Secretary, Political Department.
Secretary, External Affairs Department.
Deputy Chief of the General Staff (General Richardson).
Director, Intelligence Bureau (Mr Pilditch).

By order,
S.J.L. Olver
Under Secy. to the Government of India.

Au. (40/23-7-43)-D.

55: Government of Bengal to the Government of India (reg. Tapas Kumar Basu Mullick)

Govt. of Bengal (Home) File No. W586/43
[Bengal State Archives]

Office of the Commissioner of Police,
14, Lord Sinha Road, Special Branch,
Calcutta. Dated 24.7.43.

Confidential.
No. S.P. 902.

From
C.E.S. Fairweather, Esq., C.I.E. I.P. J.P.,
Commissioner of Police,
Calcutta.

To
The Additional Secretary to the Govt. of Bengal,
Home Department.

Sir,

In accordance with the provisions of Rule 129, Clause 2 of the Rules framed under the Defence of India Act, 1939, I have the honour to report that acting under the power vested in me under Rule 129 (1) (a). . . .

Tapas Kumar Basu Mullick, son of Profulla Chandra Basu Mullick of Village & P.S. Singhur, District Hooghly, and of 55, Chakraberia Road North, Calcutta was arrested and committed to the Alipore Central Jail on 20.7.43.

I request that the Government be pleased to issue necessary orders for his further detention in jail. His History Sheet¹ is being submitted to Government by the Deputy Inspector-General of Police, C.I.D., Intelligence Branch, Bengal.

The Government Order may be issued before the 4th August 1943.

I have the honour to be,
Sir,
Your most obedient servant

J.B. Bhattacharji
For Commissioner of Police — Calcutta.

1 Not printed

56: Case of Rathnamamba

Govt. of Madras U.S. Files, File No. 2/1944

[TNA

Record of investigation.

Copy of F.I.R. in Crime No. 114/43 of Kankipad Station.

Complainant: Rex. Inspector of Police Bez. Taluk. (S.H.O. Kankipad).

Accused: Edupuganti Venkata Rathnamamba w/o Kedandaramiah of Penamakuru.

The accused is the Vice President of the Village Panchayat Board Penamakuru. She is a member of the Superceded District Board, Kistna (on Congress Ticket).

On information that she has been harbouring absconding accused in Crime No. 58/43 of Governorpet Station (Surapaneni Rama Seshagiri Rao, and others) her house, at Penamakuru was searched on 25-7-43 at 4.30 a.m. The above said O.V. accused Seshagiri Rao was found in her house among with some other members of the National Youth League, for whom she issued notices to convene an emergent meeting on 25-7-43 at Garikaparru.

During the house search, 40 items of literature was seized among which the following are prejudicial documents.

1. A.B.C. of Dislocation by Pahila Azad; etc.

The above prejudicial documents fall under the purview of Rule 34 (7) Punishable under Rule 39(6) of D.O.I. Rules. Hence she is arrested and a case registered.

A. Veerabhadra Rao.
Inspector of Police — Bez. Taluk.
25.7.43.
True Copy

Station House Office Kankipad.

Charge under rule 39(6) read with rule 34 of the Defence of India Rules

The accused is an educated English knowing lady. She is a staunch Congressite, who takes part in Anti British activities. She is an Ex-Member of the Kistna District Board (elected on Congress Ticket) and Vice president of Panchayat Board Penamakuru Village.

On information that she is harbouring *out of view* Political accused and also possesses lot of Prejudicial literature; her house was searched in the early hours of 25-7-43; and the following books were in her suit case (which was under her cot; and the key of which was given by her).

1. National Youth League receipt Books – 6.
2. A.B.C. of Dislocation English Booklets by Pahila Azad. (1)
3. Cyclostyled Telugu Circulars entitled 'Jatheeya Wara Patrika' dated 18-11-42 (2)
4. Cyclostyled Telugu Circulars entitled 'Jatheeya Wara Patrika' dated 11-11-43 (3)
5. No. 10 of the All India Congress (3).
6. 'Ranagarjana' Telugu Printed paper, issue No. 2 issued by A.P.C.C.
7. The Tragedy of the Past – Cyclostyled – (8 pages).
8. Suggestions regarding work among industrial labour (3 pages).
9. Signed article No. 13 – 'who is Pro-japanese? Britain or India?' (2 pages).
10. Message to the All India Trade Union Congress – (2 pages).
11. Indian National Congress – Central Head Quarters – For Provincial Congress Committees.
12. Puppet Ministries and the task of the Congress – (2 pages).
13. Instructions for revolutionary propagandist Bulletin Writers and All Patriots – (2 pages).
14. To all Women patriots from the Women's Department – I.N.C. (12 pages).
15. Signed Article No. 12 – Non-Cooperation in In-exhaustible Arsenal
16. Signed Article No. 16 – who are Mussalmans Compatriots?
17. Signed Article No. 14 – who has lost? – Congress or Britain?
18. Indian National Congress – Instructions to P.C.Cs – the 9th August 43 programme.
19. Signed article No. 15 – Starve the Government and feed the People.
20. Students' Note Book containing the proceedings of the Kistna District National Youth League – in Telugu.
21. Notes dated 17-9-42 regarding Japan and China.
22. Notes written with heading 'Do Now or Never' The Policy of the Congress and the Communists, regarding War.
23. One File written in Telugu under heading 'Japan and China'.
24. 3 Notices dated 21-7-43 regarding Emergent Meeting of the Nationalist group on 25-7-43 under the signature of E. Sivamoorthy; and Rathnamamba.
25. Kishna District National Mahila Sangham – its programme (10 pages)
26. Lists of Members – Taluk-War 8 Sheets.
27. 2 Address Slips.
28. A Telugu Letter written by K.V. Seetharamiah to Comrade Ramakotiah with regard to the expenses of delegates that attended the meeting on 19-7-43.

Then her Almirah (the key of which also was given by her) was searched and the following Books were seized from it:

29. Independence Day Badges with Maps of India.
30. 5 Address Slips.
31. Notes on Capital Towns etc., in Telugu.
32. 2 Small Note Books with addresses.
33. Manifesto of the Nationalists – Group manuscript.
34. A letter regarding thirst for an Easy-Chair in Political Field.
35. A Rough Note Book.
36. *Students New Age – Nava Sakthi* – all bound in one Book.
37. A Telugu Book entitled *Bharatha Swathanthra Pradhama Yuddham*.
38. A book entitled '*All Anti-Imperialists.*'
39. Rubber stamp of the 'Kistna District National Youth League'.
40. Binoculars.

Of all the above books and literature, item Nos 1 to 15 are found to be proscribed -- containing prejudicial matter as defined under Rule 34(6) of the Defence of India Rules.

Hence she is liable for punishment under Rule 39(6) of the Defence of India Rules.

A. Purnachandrarao
12-8-43.
Inspector of Police

/True Copy/

Copy of remarks of the Dt. Superintendent of Police, Kistna No. 597/Stat/43.
Forwarded to the Dt. Magistrate for favour of sanctioning.

K.M. Hussain.
23/9

Dt. Superintendent of Police, Kistna.

/True Copy/

57: Official Notings (28.7.43) (extracts)

File No. 44/57/43 – Home Poll (I)
[NAI]

Notes in the Defence Department

The suggestion of the Calcutta Chief Justice,¹ in brief, is that on the principle of Audi Alteram Partem, and on the analogy of Regulation III of 1818 and U.K. Def. Regulation 18B, Defence of India Rule 26 should also contain some provision for informing the detenu of the grounds of his detention and to enable him to show cause against his detention.

2. In Regulation III, Sec. 5 seems to be the only relevant provision. It is intended to afford an opportunity to the detenu to make representations to Government from time to time. But the 3rd recital to the Regulation lays down in clear language that the grounds of detention 'should from time to time come under revision' and detenu 'should at all time be allowed

freely to bring to the notice of Government all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed'.

3. In U.K. Defence Regulation 18B, Sub-regulations (3), (4) and (5) provide a comprehensive system where by a detenu can represent his grievances to an Advisory Committee. Under this Regulation the detenu can demand the charge for which he has been detained and it is enjoined on the Committee to inform the objector of the grounds on which the order has been made and to furnish him with such particulars as are in the opinion of the Chairman, sufficient to enable him to present his case. The Provisions did not form a part of Regulation 18B as originally enacted, but were inserted subsequently in deference to criticism voiced in Parliament. When the question of effecting a corresponding amendment to our own rule 26 came up, it was, however, considered unnecessary to do so 'unless it comes in for hostile — and valid — criticism'.

4. The Federal Court also commented at some length on the propriety of specifying the grounds of detention more pointedly, in their recent notable judgment in Talpade's² case. Though their final sentence on this subject, occurring in the dictated judgment is excluded from the finally issued version, the relevant observations were examined in the Home Department and the result is embodied in para 4 of their express letter No. 15/6/43 — Poll (I) dated 1-5-43³ to Provincial Governments.

5. It will appear from the above that the Calcutta Chief Justice's suggestion goes substantially beyond the position concerned or designed for times of stress such as a long drawn war, or in U.K. Defence Regulations. So far as the essential point of the matter is concerned, namely that the extraordinary powers of detention given by rule 26 should be exercised with the greatest circumspection and only in the most exceptional circumstances, it will be observed that we have already sent word to the provinces to review all detention orders and the delegations made for making those Orders. This should go a long way to meet the real principle behind the suggestion. But any action, which may result from this will only accrue by way of executive discretion, and would neither be subject to the watchful scrutiny of the judiciary nor will in any way allay public criticism. For the public at large and the judiciary, any concession in the matter, should manifest itself in the statutory provision of some machinery like the Advisory Committees in U.K. which may inspire the confidence of those aggrieved. We can take it that the suggestion that detention orders should always state the grounds for detention, is *prima facie* too big to merit statutory inclusion in the rule itself. The new form of order suggested in the H.D. express letter will considerably improve the definition of grounds in the Orders. The question is whether and how far it is possible to make the system in India in this connection approximate to the position obtaining in U.K.

Home Department may see for comments, first.

S.R. Kaiwar

A.S. 24.7.43.

I think that all we can say at this stage is that provisions on the lines suggested would, if circumstances were other than they are, be desirable in principle, and to ask Home Department to show cause to the contrary, as I imagine they will certainly be able to do.

L.J.D. Wakely,
26.7.43.

Secretary (Home Dept.)

Defence Deptt. U.O. No. 7436-DC/43, dated 26.7.43.

Assuming that the *Hindustan Times*⁴ report is reasonably accurate, it would appear that the Chief Justice has suggested the inclusion in Defence Rule 26 of provisions corresponding to those of paragraphs 3, 4 and 5 of the U.K. Regulation 18 (B). Briefly, these paragraphs relate to the setting up of advisory committees to whom any person aggrieved by the order of detention may make his objections; to the opportunity to be afforded to each detenu to make representations to the Secretary of State, irrespective of whether he proposes to make an objection before the advisory committee; and to the duty of the Chairman of the advisory committee to inform the objecting detenu of the grounds on which he is detained and to furnish him with sufficient particulars to present his case.

2. Before examining these three points, it is I think desirable to clarify our position *visa-a-vis* the Chief Justice in this matter. As far as I can gather from the *Hindustan Times* report, the Chief Justice has not held that the absence of these provisions in Defence Rule 26 constitutes any illegality; he appears merely to have expressed surprise at their absence in view of the fact that they are included in Regulation III (I cannot find any provision in Regulation III laying down either that the person detained shall be informed of the grounds of his detention or that his case shall be examined by an advisory board) and in U.K. Regulation 18 (b), and to have hoped that his observations might be considered by those responsible for the drafting of the Rule. I cannot see, therefore, that, apart from his eminence as a citizen, the Chief Justice has any status in this matter and I presume we are certainly under no compulsion to defer to his wishes. The position I take it, then, is that while we may, at Defence Department's request, make use of the present opportunity to re-examine the position, there is no reason why we should reconsider the attitude previously adopted on this point unless the relevant circumstances appear to us to have changed.

3. As regards the inclusion in Defence Rule 26 of a provision for advisory boards to whom security prisoners should submit objections, it will be seen from the late Defence Co-ordination Department's File No. 184/OR/39 that we resisted this proposal at the time of the drafting of Defence Rule 26. The same question was further commented on in para. 5 of Addl. Secy.'s note of 22.11.41 on the Home Department file No. 107/7/41 - Poll (I). Our position from the beginning has, I think, been that we should resist any such provision unless valid and widespread criticism made it advisable as a matter of policy to give way on this point. Whether such a stage has now been reached is a matter of high policy. Relevant considerations are the difficulty which we should doubtless experience in providing suitable personnel for such advisory boards, the fact that cases of all security prisoners are frequently re-examined by both the Central and provincial Govts, rendering such advisory boards to some extent superfluous; and the difficulties in the way of providing security prisoners with any detailed information as to the grounds of their arrest referred to in the final paragraph of this note.

4. The second point raised by the Chief Justice is the need for a provision parallel to that of U.K. Regulation 18 (B) (4), providing that each detenu shall have an opportunity to make representations to the Secretary of State. There are so far as I am aware no restrictions on the submission of application from security prisoners to Government, provided these are not couched in un-seemly language. I see no cause whatever for including in the rule any detailed provision in that respect.

The final point taken by the Chief Justice is that each security prisoner should, in conformity

with para. 5 of Regulation 18 (B), be informed of the grounds on which he is detained. This is to some extent linked with the question of advisory boards, this material being supplied to detenus in England to enable them to present their case before the boards. In this connection please see Addl. Secy.'s note of 24.4.43⁵ on Home Department File No. 15/6/43 – Poll (I). I have no doubt that, on security grounds alone, we must rule out any proposal that detailed information as to the grounds for their arrest should be supplied to security prisoners. There would I imagine, however, be less objection to supplying them with general information somewhat on the lines of the information supplied to Central Government security prisoners when their cases were reviewed by the Dain Committee; a typical form used for this purpose is placed as appendix I to notes.⁶

S.J.L. Olver.
28.7.43.

Addl. Secy.

I agree generally, but should like to consider the matter further after the official copy of the judgment has been received. We cannot act on press reports. I would only observe at this stage that the 'Audi Alteram Partem' maxim may in certain circumstances have to give way to the even more important principle that 'the safety of the realm is the greatest law' (or whatever the correct words are).⁷ And, secondly, that the 'audi alteram partem' principle can certainly be given effect to without having advisory committees.

R. Tottenham.
28.7.43.

1 Doc. 17 2. Doc. 27. 3. Doc. 30. 4 Not printed 5 Doc. 28. 6. Not printed

7 In the mss copy of the note Tottenham wrote in the margin *Salus populi ultima lex* and then crossed it out -- [Ed.]

58: Case of Basu Deb Datta Roy

Government of Bengal (Home) File No. W522/43
[Bengal State Archives]

Intelligence Branch, C.I.D.,
13, Lord Sinha Road,
Calcutta The, 27th July, 1943.
No. 22029, 953-43/W.B.

From The Dy. Inspector-General of Police,
Intelligence Branch, C.I.D., Bengal.
To A.E. Porter, Esqr., C.I.E., I.C.S.,
Addl. Secy. to the Govt. of Bengal, H.D.

Sir,

I have the honour to enclose herewith in a sealed cover a copy of brief History¹ of Basudeb

Datta Roy alias Basu s/o Hari Mohan Datta Roy and request you to issue orders for his detention as a State Prisoner under Regulation III of 1818. He is an important, active and trusted member of the Jugantar party and was arrested in pursuance of the policy of attacking the party. His period of detention extended by G.O. No. 7372 Def. dated 18.6.43 expires on 3.8.43.

I have the honour to be,
Sir,
Your most obedient servant,

For Deputy Inspector General of Police,
I.B., G.I.D.

PB/OP.
27.7.43.

Not printed.

59: Chief Commissioner, Delhi to the Secretary, Government of India (reg. setting up of special courts)

File No. 3/68/43 - Home Poll (I)
[NAI]

N.F. 6/105/43-S.B.

Secret.

From
A.V. Askwith, Esq., C.I.E., I.C.S.,
Chief Commissioner, Delhi.

To
The Secretary to the Govt. of India,
Home Department, New Delhi.

Delhi, dated the 28th July 1943.

Sir,
I have the honour to reply to Sir Richard Tottenham's secret express letter No. 3/68/43 - Poll (I) dated the 14th July 1943¹ regarding the course of action to be followed in the event of any revival of Congress disorder next month.

2. If my opinion is desired on the general questions raised in the later part of Sir Richard Tottenham's letter, it is as follows:

I. The general experience of the last twenty years is that the expectation of bringing offenders in 'Political' cases to justice in the ordinary courts is small. Unless special courts are set up, and the jurisdiction of the High Court is ousted, it would hardly be possible for the executive authorities to get adequate punishments imposed in any subversive movement.

This is due partly to executive prejudice of many of the High Court Judges but even more the legalistic and impractical atmosphere which envelops the superior courts in India. That matters should have reached a stage when we cannot rely on the High Courts to perform their proper function in relation to a serious anti-Government movement is lamentable, but I think most competent observers would agree that the facts are as stated.

II. Situations occur fairly frequently in India which could not be controlled by the civil authorities employing their ordinary powers, but which can be effectively controlled by them without recourse to martial law, if they are invested with additional powers. In particular, if special courts are set up to try offenders with the jurisdiction of the High Courts excluded. It would be most unfortunate, from every point of view if the handling of such situations had to be taken out of the hands of the civil authorities and martial law proclaimed.

III. The recent Judgement of the Federal Court regarding the validity of the Special Criminal Courts Ordinance 1942 is so perverse that there seems every likelihood of its being upset in the Privy Council or at least of such observations being made in the Privy Council judgments as will present judges in India from taking so extraordinary a line in future.

In the meantime if a need arises, I would urge that the Government of India should not hesitate to advise the Governor General to promulgate another Ordinance of the same kind. I suggest that it should be so framed as to leave it to the discretion of the prosecuting authorities, subject to such instructions as the Provincial Government and or the District Magistrate may give, to choose whether they will bring any particular case before a special Court or before one of the ordinary courts. In the hearing of the cases before the various High Courts and the Federal Court, counsel (including counsel for the Crown) seem to have imagined that the simultaneous existence of two different systems of adjectival criminal law, and two distinct sets of Criminal courts, in the same local area would be anomalous — indeed unthinkable. But to officials who have served in an area where the Frontier Crimes Regulation is in force such an arrangement is commonplace. In a minor degree, an arrangement of the same kind exists permanently in all those parts of India to which section 30 of the Code of Criminal procedure applies; in a large number of serious cases it is in the discretion of the prosecuting authorities to lay the case before a magistrate with section 30 powers or to bring it before a magistrate with a view to its commitment to the sessions. There is nothing novel or outrageous in giving the prosecution a choice of form.

Provisions should be included in the new Ordinance expressly modifying sections 23 and 29 of the Code of Criminal procedure. The Federal Court appears to have been possessed by a curious idea that a special sanctity attaches to the Code of Criminal Procedure which does not attach to other Acts and Ordinances. An express amendment by the Ordinance of a section of the Code might help to clear misapprehensions on this subject.

3. It is, I think generally agreed that the promulgation of martial law in the capital of India (except perhaps in the face an enemy invasion, when the whole country might be put under martial law) can hardly be envisaged. This being so, the argument in clause II in the preceding paragraph has a special meaning in regard to Delhi.

4. After writing the above I should say that while full precautions will be taken, there is no reason to anticipate any serious trouble in Delhi on the 9th August. Probably the

underground Congress workers will attempt to organise some kind of minor outrages-damages to letter boxes or something of that kind — but as the situation is developing at present it is difficult to conceive that they will have any success.

I have the honour to be,
Sir,
Your most obedient servant.
Askwith
Chief Commissioner, Delhi.

A.S.K.

1 Not printed.

60: Criminal Investigation Department to the Chief Secretary, Government of Madras (Rathnamamba's case)

Govt. of Madras U.S. Files, File No. 2/1944
[TNA]

Secret.

From
The Special Branch,
Criminal Investigation Department.

To
Chief Secretary.

No. 4437/C.

Dated: 30th July 1943.

National Youth League: Activities of

Please refer to the correspondence ending with my note No. 4092/C of the 16th July 1943.¹

On reliable information that a meeting of the National Youth League was to be held in the house Edupuganti Ratnamamba at Penamakur, Kistna District on the night of 24-7-43, in order to draw out a programme for the Congress anniversary on 9-8-43, the Madras Special Branch Inspector raided her house during the early hours of 25.7.43. In that house Surapaneni Ramaseshagiri Rao, a member of the National Youth League, concerned in Crimes Nos 68/43 and 45/43 of the Governorpet Police Station under rule 39 (6) of the D.O.I. Rules and 224 I.P.C. respectively, who had been absconding for a long time, was arrested. A search of the house was thus made and, when among several other prejudicial documents, a copy of the Special programme for the 9th August 1943 issued by the Indian National Congress Central Directorate, sent to Govt., under my endorsement No. 3690/C of the 3rd July 1943 was found. There were 5 other members of the National Youth League in the house too at the time. This

confirms the view of the Special Branch that the objects of the National Youth League are allied to those of the Congress and that after the subsidence of the Congress Rebellion and the elimination of the important Congress leaders this Youth League was started to revive the Congress programme, working underground.

Edupuganti Ratnamamba, President of the Panchayat Board, Penamakur, and a member of the Superseded District Board, Kistna, is the wife of Edupuganti Kodandarayamma, Government Sub-Registrar; Kovv Nellore District. As she is liable under rule 39 (6) of the D.O.I. Rules, she has been arrested.

Supdt. of Police, S.B. C.I.D.

No. 4438/C.

Copy Forwarded for information to E.J. Beveridge Esq., I.P., Asst. Director (S) intelligence Bureau, New Delhi, with reference to my endorsement No. 4093/C of the 16th July 1943.

Secret

Confidential.

From
The Special Branch, Criminal
Investigation Department.

To
Chief Secretary.
No. 4786/C.

Dated: 10th August 1943.

National Youth League – Activities of

Reference my note No. 4437/C of the 30th July 1943 regarding the arrest of Edupuganti Ratnamaba.

The following prejudicial and objectionable documents¹ were seized from her house:

Supdt. of Police
Special Branch – C.I.D.

1 Doc. 60 in Chapter I – Sect. A.

2 See Doc. 56 where the list of documents are given.



61: Cypher telegram to the Government of India from Bengal regarding Basudeb Datta Roy¹

Government of Bengal (Home) File No. W522/43
[Bengal State Archives]

The 30th July 1943.

Cypher

Important.

Porter to Tottenham we are sending by air mail proposals for the detention on Central Governments order under Defence Rule 26 of Basudeb Datta Ray an active Jugantar member detained under Defence Rule 129 whose being at large now is dangerous in view of Jugantar collaboration in present C.S.P. plans stop his release is due third August and we regret very short time within which we are asking for your decision but should appreciate an intimation what it is in time to get him out of the jurisdiction of the High Court before the third should you be willing to pass the order suggested.

Bengal

¹ See Doc. 58

62: Official Notings reg. interrogation methods (dt 30.7.43-31.7.43) continuation of Docs 48 and 49) (extracts)

File No. 44/2/43 - Home Poll (I)
[NAI]

Official Notings

I agree that D.I.B. should take this up with provinces in person.¹ But in the mean while we have evidently lost through inadequate machinery for interrogation, a great deal of material which might have helped us to deal with the Congress conspirators. Presumably however the provision and training of adequate staff would take so long that we cannot now hope to fill gaps by this method in our case against the Congress leaders.

Maxwell.
30.7.43

Addl. Secy.

I am afraid so. I remember asking months ago whether it would do any good attempting to interrogate any of the Working Committee and their view was that, even if expert

interrogators were available, we could not hope to get anything out of these people. D.I.B. should see.

R. Tottenham.
30.7.43.

D.I.B.

S. Nos 20-22 (Receipts)

Ajmer, Orissa and Sind replies have been added to the file. Replies are now complete. U.S. may see before the file is passed on to D.I.B.

S.J.L. Olver.
31.7.43.

1 See Doc. 49.

63: Chief Secretary Government of Bihar to the Govt. of India (revival of disorders)

File No. 3/68/43 - Home Poll (I)
[NAI]

From

Y.A. Godbole, Esqr., C.I.E, I.C.S.,
Chief Secretary to Government,

To

The Additional Secretary to the Government of India,
Home Department, New Delhi.
RANCHI, 1st August 1943.

Sir,

I am directed to reply to your Express letter No. 3/68/43 - Poll (I) of the 24th July 1943¹ on the subject of action in the event of revival of serious disorders.

2. The Provincial Government agree that such plans for the revival of disorder as have come to notice have mainly emanated from the Congress Socialist Party, the public support for which does not appear to be much or increasing. The chances of organised trouble on a large scale are not very great. Any disorders that may occur will probably be sporadic and, though their number might be large, they are unlikely to be so widespread as in 1942. The Provincial Government also agree that action to be taken against those responsible for the disorder should as far as possible, take the form of prosecution for substantive offences, the use of Defence of India Rule 26 being restricted to the detention of persons who commit no over act themselves but are known to be organizing or inciting others to do so. The Provincial Government further agree that now that the use of the Special Criminal Courts Ordinance in the manner originally contemplated is denied to them the wisest course, in order to prevent

disorder taking the serious form that it took in 1942, would be not to delay the proclamation of Martial law too long.

3. I am to enclose for your information copies of certain letters² issued by the Provincial Government and the Inspector General of Police to local officers containing their instructions on the measures to be taken to prevent revival of trouble and the action which would be appropriate in dealing with it if it breaks out. This Government have made such police dispositions as they consider necessary and the General Officer Commanding, 101 Lines of Communication Area have arranged at their instance to strengthen the number of troops available and to distribute them beforehand in those areas where the likelihood of trouble is the greatest. Instructions have issued to the armed forces (police and military) to move about and show themselves in the districts. Local officers have been asked to keep a watch on persons concerned in the disturbances of 1942 who have recently come out or are still coming out of jail and to look out for old absconders in particular the members of the Congress Socialist Party. Action is being taken under Defence of India Rule 26 against persons whose being at large might be a source of trouble. In this category have to be included a number of persons convicted or on trial in Special Criminal Courts whom District Judges and the High Court are freely releasing on bail. District Officers have been told to see that village patrols are properly organised and functioning as quickly as possible along the main lines of communication; and pending the Governor-General's approval of the Village Responsibility Act, which this Government have framed, a Notification has been issued empowering District Officers under Defence of India Rule 593 to appoint special constables for the guarding of these communications where villagers are not volunteering for patrol duty in sufficient numbers. The Provincial Railway Protection Police are in position on important railway lines. Arrangements have also been made to provide adequate motor transport in the districts for the quick movement of police and troops by land and by river. The Provincial Government also propose to take an early opportunity to discuss with the Army Command, as suggested in your letter, the possibility of Martial law being required in particular areas and the arrangements that would be necessary to put it into effect. These arrangements have already been settled in outline when action in the event of enemy invasion was considered last year and our local officers are acquainted with that scheme. Government, in consultation with the General Officer Commanding, 101 Lines of Communication Area, will examine what changes, if any, are necessary in those arrangements and further instructions will be issued to local officers if required.

I have the honour to be,
Sir,

Your most obedient servant,

For Chief Secretary to Government

B.P.

1. Doc. 54.

2. In this connection see Documents 63 and 66 in Chapter I – Sect. A.



64: Addl. Secretary, Government of Bengal to the Secretary, Government of India

File No. 3/68/43 – Home Poll (I)
[NAI]

From
A.E. Porter, Esq., C.I.E., I.C.S.,
Additional Secretary to the Government of Bengal.

To
The Secretary to the Government of India
Home Department.

No. 1264P.S

dated the 4th August, 1943.

Subject: Action in the event of revival of a serious disorder.

Reference: Government of India, Home Department Express letters No. 3/68/43 – Political (I), dated the 24th¹ and 28th July, 1943.²

The Government of Bengal agree that there is no reason to anticipate any organised and widespread trouble in Bengal principally owing to their determined and sustained attack on all terrorist groups. . . .

2. The difficulty of taking preventive action in the present circumstances is accentuated by the fact that Defence Rule 26 is not available to the Government of Bengal and Regulation III of 1818 cannot be expediently used in many cases. The Provincial Government are consequently driven to rely, for the time being, upon the use by their police officers of Defence Rule 129 and an extension by them of the period of detention under that Rule until powers under, or analogous to those under, Defence Rule 26 are restored to them. They would, however, feel considerable reluctance to resort to this procedure in any considerable number of cases, and they consequently hope that, at a very early date, the Government of India will reach a decision upon the proposal which has been put before them by the Provincial Government for the enactment of legislation applicable to Bengal, such as is referred to in paragraph 3 of the letter dated the 24th July.

¹ Doc. 54.

² See Doc. 67 in Chapter I – Section A



65: Case of Jasoda Kumar Das Gupta

Government of Bengal (Home) File No. W526/43
[Bengal State Archives]

Intelligence Branch, C.I.D.,
13 Lord Sinha Road,
Calcutta, dated 4th August 1943.
No. 22956/791/43 (WB) (BM)

From
The Deputy Inspector General of Police,
Intelligence Branch, C.I.D.,

To
A.E. Porter Esqr., C.I.E., I.C.S.,
Addl. Secy. to the Govt. of Bengal, H.D.

Sir,

I have the honour to invite a reference to G/O No. 8316 Def. dated 10.7.43 and to enclose¹ herewith a copy of Brief History dated 4.8.43² of Jasoda Kumar Das Sarma, alias Jasoda Kumar Das Gupta s/o Surendra Kumar Das Gupta and to request you to issue orders under Regulation III of 1818 before 26.8.43 detaining him as a State prisoner. He is an important member of the Jugantar Party, was arrested in pursuance of the Policy of attacking that Party.

I have the honour to be,
Sir,
Your most obedient servant,

For Dy: Inspector General of Police, I.B.

PB/RA.
4.8.43

1. Not printed.
2. Not printed.



66: Case of Jasoda Kumar Das Gupta (Transfer to Delhi)

Government of Bengal (Home) File No. W526/43
[Bengal State Archives]

Government of Bengal
Home (Defence) Department,

Express Letter

From
A.E. Porter, Esq., C.I.E., I.C.S.,
Additional Secretary to the Government of Bengal

To
The Additional Secretary to the Government of India,
Home Department

No. 663 DS

dated the 5th August, 1943.

Subject: Proposed detention under Defence of India Rule 26 (1) (b) of Jasoda Kumar Das Sarma alias Das Gupta, son of Surendra Kumar.

Particulars are enclosed¹ in a closed cover of Jasoda Kumar Das Sarma @ Das Gupta, son of Surendra Kumar. This individual is in detention in Bengal under Defence Rule 129. The maximum period of his detention will expire on the 26th August, 1943. There is no information upon which he can be prosecuted in court, but this Government would have directed his continued detention under Defence Rule 26 (1) (b) if it had been possible to use the powers conferred by that Rule in Bengal. The undersigned is directed to enquire whether the Government of India would be prepared to issue orders for his detention under Defence Rule 26. If so, it is requested that an early intimation may be given to this Government and arrangements will then be made to transfer him to Delhi. It is suggested that the transfer be postponed so that he may reach Delhi on the 24th August, 1943. This suggestion is made in order that his transfer may be avoided should the Government of Bengal before that date find itself in a position to exercise powers under, or analogous with those under, Defence Rule 26.

A.E. Porter

Addl. Secy. to the Government of Bengal
No. 663/1 DS

Copy to D.I.G., I.B., with a request to be prepared to send him under escort to Delhi should the reply of the Government of India so require.

No. 663/2 DS

Copy to Chief Commissioner, Delhi, with a request that he will be good enough to consent

to the transfer of this prisoner under D.I.R. 129 (5) in the event of the Government of India's being prepared to issue an order under D.J.R. 26 (1) (b).

Calcutta,
The 5th August, 1943.

A.E. Porter
Addl. Secretary to the Government of Bengal.

1 Not printed.

67: Official Notings (extracts) – Reg. Hari Sadhan Sen¹

Government of Bengal (Home) File No. W502/43
[Bengal State Archives]

H.S.² of Hari Sadhan Sen is placed in a sealed cover below. It is recommended that orders may kindly be issued making him a state Prisoner under Regulation III of 1818. He is an important & leading member of the Jugantar – C.S.P. combine & was arrested in pursuance of the policy of attacking those parties.

P. Biswas
5/8
For D.I.G., IB

1 Doc 44 2 HS (History Street) not printed

68: Case of Hari Sadhan Sen (contd.)

Government of Bengal (Home) File No. W502/43
[Bengal State Archives]

Express Letter

Home (Defence)

From A.E. Porter, Esq., C.I.E., I.C.S.,
Addl. Secy. to the Government of Bengal

To The Additional Secretary to the Government of India,
Home Department.

No. 678 DS

Dated, 6th August, 1943.

Subject: Proposed detention under Defence of India Rule 26 (1) (b) of Hari Sadhan Sen,
son of Surendra Kumar.

Particulars are enclosed in a sealed cover¹ of Hari Sadhan Sen, son of Surendra Kumar. This

individual is in detention in Bengal under Defence Rule 129. The maximum period of his detention will expire on the 23rd August 1943. There is no information upon which he can be prosecuted in Court but this Government would have directed his continued detention under Defence Rule 26 (1) (b) if it had been possible to use the powers conferred by that Rule in Bengal. The undersigned is directed to enquire whether the Government of India would be prepared to issue orders for his detention under Defence Rule 26. If so, it is requested that an early information may be given to this Government in order that arrangements may be made to transfer him to Delhi. It is suggested that the transfer be postponed so that he may reach Delhi on the 2st August, 1943. This suggestion is made since the issue of orders by the Government of India and his transfer would be unnecessary should the Government of Bengal before that date be in a position again to exercise powers under, or analogous with those under, Defence Rule 26.

A.E. Porter

Addl. Secretary to the Government of Bengal

No. 678/1 Ds.

Copy to D.I.G., I.B., with a request to be prepared to send him under escort to Delhi should the reply of the Government of India so require.

No. 678/2 Ds.

Copy to Chief Commissioner, Delhi, with a request that he will be good enough to consent to the transfer of this prisoner under D.I.R. 129'5) in the event of the Government of India's being prepared to issue an order under D.I. Rule 26 (1) (b).

A.E. Porter

Addl. Secretary to the Government of Bengal.

Calcutta,

The 6th August, 1943.

6.8 SG'6.

1. Not printed.

69: Note on Kishori Lal Datta who wanted to be transferred to Delhi jail¹

Government of Bengal (Home) File No. W554/43
[Bengal State Archives]

Kishori Lal Datta, s/o Sarat Kumar Datta.

History sheet² scrutinized and returned. An ex-detenu (Anushilan). Implicated in the inter-provincial conspiracy. In 1942 took an active part in planning sabotage; in 1943 was a prominent leading member of the Central Organisation of the Party and a custodian of arms and supplied

a revolver to an absconding member. Maintained inter-district connections and agreed in R.S.P. — C.S.P. collaboration. Detention and continued detention justified.

A.E. Porter
9.8.43.

1 In this connection see chapter I Sect. A — Doc. 51.

2 Not printed but see biographical appendix.

70: Government of India to all Provincial Governments (Legal access to security prisoners)

File No. 44/37/43 — Home Poll (I)

[NAI]

Government of India

Home Department

Express Letter

From

Home, New Delhi.

To

To All Provincial Governments and
Chief Commissioners (except Panth Piploda).

No. 346/43 — Poll (I)

New Delhi, the 10th August 1943

Subject Interviews between security prisoners and their legal advisers and the production of security prisoners in Court.

We have recently had under examination the conditions under which security prisoners should be allowed interviews with their legal advisers and the connected question of how applications for the production of these prisoners before the High Court should be dealt with.

2. We consider that the general principles laid down in paragraphs 3 and 4 of the Defence Department letter No. 5-DC (6)/43 dated March 2nd 1943,¹ regarding interviews between security prisoners and their legal advisers hold good. It should be noted that the practice in England is that visits by counsel or solicitors in connection with a detained person's affairs will be allowed at all reasonable times'. It is in our view important, however, that the condition under which these interviews should be held should be clearly laid down. Enclosed therefore is a copy of a sub-paragraph that we propose to add to the Central Government Security Prisoners Order, 1942, specifying the condition on which security prisoners may be granted interviews with their legal advisers, and laying down the manner in which such interviews shall be conducted. We would suggest that you should urgently consider making a similar addition to your Provincial Security Prisoners Rules and we should be glad to receive the text of any such addition as you may propose to make.

3. There will be many cases in which, for security reasons, it would be desirable to avoid the production of a security prisoner on the order of the High Court. We have examined various suggested methods, including the proposals put forward by Provincial Governments in reply to the Defence Department letter of 2nd March referred to above, for preventing the production of security prisoners in Court, or for ensuring that Government should be given opportunity to argue against their production before final orders are passed by the High Court. The following are the principal suggestions examined:

(a) Publication of a fresh rule 26A in terms of the draft enclosed with Defence Department letter of 2nd March, prohibiting the production of security prisoners in Court except for the purpose of answering a charge of an offence.

The general sense of Provincial Governments' replies was not in favour of introducing the proposed new rule; doubts were expressed both as to its necessity and its effectiveness; and the further objection was raised that publication of the rule would draw attention to the existence of a loophole of which the public were not as a whole aware. Apart from this, further examination revealed that the rule would not succeed in securing the object in view, since it would still be open to a High Court to contend that the order of detention was not made in good faith, and that the prisoner concerned was not, therefore, detained in pursuance of an order made under Defence Rule 26 (1) (b), in which case the provisions of the proposed rule 26A would not apply.

(b) That sub-section (3) of section 491 of the Criminal Procedure Code, excluding from the application of sub-sections (1) and (2) of that section persons detained under certain special Regulations and Acts, should be enlarged to include persons detained under Defence Rule 26.

Here again, it was found on examination that, notwithstanding such inclusion, the High Court could, by raising the question of good faith, order the production of a security prisoner before it. Further, such a provision would overlap section 16 (1) of the Defence of India Act.

(c) That provision should be made, possibly by the addition of a suitable new sub-section to section 16 of the Defence of India Act, for the Crown to be heard in each case, before the High Court passed an order for the production of security prisoner.

A possible objection to this course was that it tended to place the High court in the role of cross-examining counsel for the security prisoner. It was further noted that in such cases as had so far occurred the High Court concerned had shown no disposition to deny the Crown opportunity to argue against the prisoner's production, before passing orders in the case.

4. After examining the alternatives outlined in the preceding paragraph, we have come to the conclusion that there is no way open to us of effectively questioning the authority of the High Court to order the production of a security prisoner before it. We are of the opinion, however, that every effort should be made to secure

(a) That the Court gives an opportunity to Government to argue the case against the production of the security prisoner before final orders are passed by the High Court; and

(b) That, in the event of the prisoner being produced before the Court, the Court's consent is in all proper cases obtained to the holding of the proceedings in camera and to the exclusion of the prisoner from unauthorized contact with members of the public.

As stated in the preceding paragraph, we have not so far observed any disposition on the part of the Courts to deny to Government the opportunity sought at (a) above. Should such a disposition subsequently become evident, however, we should be willing to consider making the necessary provision in section 16 of the Defence of India Act, on the lines indicated in

the preceding paragraph; and we should be glad if you would let us know immediately, should you at any time consider such a provision necessary.

Addl. Secy. to the Government of India.

No. 3/16/43 - Poll (I).

New Delhi, the 10th August 1943.

Copy to Defence Department and Legislative Department.

By order,

Under Secy. to the Government of India.

Au. (22/8-8-43)-D

Central Government Security Prisoners Order 1942.

Draft

Sub-paragraph (11) of Paragraph 11.

(11) In addition to the interviews permissible under the preceding provisions of this paragraph, a security prisoner may, with the permission of the authority under whose orders the security prisoner is detained, interview his legal adviser in connection with a pending or contemplated legal proceeding to which the security prisoner is or will be a party. Not more than one such interview shall ordinarily be allowed in connection with a contemplated legal proceeding before the proceeding is instituted. All such interviews shall take place on the premises in which the security prisoner is confined, and shall be subject to such conditions and restrictions as the Superintendent may consider necessary to ensure security and prevent the passing of unauthorized communications unconnected with the case relating to which the interview is granted.

1 Not printed

71. In regarding R. Subbarayan – Prisoner [Leach C.J.,
King and Lakshmana Rao J.J. Full Bench
(10 August 1943)]

AIR, Vol. 30, 1943, Madras, pp. 602-8

Criminal Misc. Petn. No. 310 of 1943, Decided 10th August 1943, for issue of a writ of certiorari.

T.R. Venkatarama Satriar for M.S. Venkatarama Aiyer-for Petitioner

Advocate-General for the Crown

Leach C.J. – This is an application for the issue of a writ of certiorari for the quashing of the proceedings in Ordinance Case No. 1 of 1943 on the file of the Special Judge, Chingleput. The application involves the decision of the question whether sub-section (1) of S.3 of the Special Criminal Courts (Repeal) Ordinance, 1943 (Ordinance 19 of 1943), embodies a valid

provision of law. The petitioner and seven other persons were charged with having conspired to blow up the Uppanar Railway bridge near Shiyali and with having attempted to destroy the bridge. After their arrest, the accused persons were brought before the stationary Sub-Magistrate of Shiyali, who transferred the case to the Sub-Divisional Magistrate of Mayavaram. Under the provisions of the Special Criminal Courts Ordinance, 1942 (Ordinance 2 of 1942), the Sessions Judge of Negapatam was appointed by the Government of Madras the Special Judge to try the case. Subsequently, the Government of Madras transferred it to the file of the Special Judge for the Presidency Town of Madras. The Special Judge is the Sessions Judge of the Chingleput division. On 28th April 1943, by which date the trial had been almost concluded, the petitioner filed the present application. It came before the Court on 29th April, the day before the Court rose for the summer vacation. At the request of counsel for the petitioner the hearing was adjourned until 14th July. On 14th July the hearing was adjourned until 2nd August, again at the request of counsel for the petitioner. The further adjournment was asked for because counsel wished to obtain copies of judgments delivered by the Calcutta High Court on 12th July in a similar case.¹ The judgments of the Calcutta High Court have not yet been published, but by the courtesy of the learned Chief Justice of that Court copies have been supplied for use in this case. After the decision of the *Calcutta High Court*² the same question was raised in a case before the *Patna High Court* and the learned Chief Justice of that Court has likewise kindly supplied copies for use here.

On 4th June 1943 in A.I.R. 1943 F.C. 36, the Federal Court, by a majority, held that Ss.5, 10 and 16 of ordinance 2 of 1942 were invalid.³ This meant that the proceedings against the petitioner and his co-accused before the Special Judge were unlawful. When the case was before this Court on 29th April a stay of the trial was refused. Consequently the Special Judge continued the hearing and on 11th May he delivered his judgment. He sentenced the petitioner under one charge to undergo rigorous imprisonment for five years and to pay a fine of Rs 1000, with rigorous imprisonment for one year in default; and under another charge he sentenced him to undergo rigorous imprisonment for five years, the sentences to run concurrently. On 5th June, the day after the Federal Court had decided that Ss.5, 10 and 16 of Ordinance 2 of 1942 were invalid, the Governor-General promulgated Ordinance 19 of 1943. It repeals Ordinance 2 of 1942, but sub-section (1) of S.3 purports to validate subject to rights of appeal and powers of revision conferred by sub section (2), sentences already passed by Special Courts constituted under the earlier Ordinance. The petitioner denies that sub-section (1) has made the sentences valid. He maintains that the Governor-General had no power to enact this sub-section. Section 3 of Ordinance 2 of 1942 provided that Courts of Criminal jurisdiction might be constituted under the Ordinance of the following classes, namely, (1) Special Judges; (2) Special Magistrates; and (3) summary Courts. Section 4 said that the Provincial Government might appoint to be a special Judge for such area as it might think fit any person who had acted for a period of not less than two years as a Sessions Judge or an Assistant Sessions Judge under the Code of Criminal Procedure, 1898. Section 5 stated that a Special Judge should try such offences or classes of offences or such cases or classes of cases as the Provincial Government or a servant of the Crown empowered by the Provincial government in that behalf, might by general or special order in writing, direct. Section 10 contained a similar provision with regard to cases to be tried before a Special Magistrate. Section 16 said that a Summary Court should have power to try such offences or classes of offences, or such cases or classes of cases as the District Magistrate, or in a Presidency Town the Chief Presidency Magistrate, or a servant of the Crown authorized in that behalf by the

District Magistrate or Chief Presidency Magistrate might direct. Ordinance 61 of 1942, inserted into Ordinance 2 of 1942, S.25A (1) which provided that the Sessions Judge of the Sessions division within which was situated the area for which a Special Judge had been appointed might, at any stage of the proceedings, transfer a case before him to another Special Judge within the Sessions division. Sub-section (2) gave a similar power to the District Magistrate to transfer a case from one Special Magistrate's Court to the Court of another Special Magistrate. Ordinance 19 of 1943 consists of five sections. The first section gives its short title and states that it shall come into force at once. Section 2 repeals in its entirety Ordinance 2 of 1942. Section 3 reads as follows:

'Confirmation and continuance, subject to appeal, of sentences — (1) Any sentence passed by a Special Judge a Special Magistrate or a Summary Court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of section, shall continue to have effect, as if the trial at this which it was passed had been held in accordance with the Code of Criminal Procedure, 1898 (5 of 1898) by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the first class respectively, exercising competent jurisdiction under the said code.

(2) Notwithstanding anything contained in any other law, any such sentence as is referred to in sub-section (1) shall, whether or not the proceedings in which the sentence was passed were submitted for review under S.8, and whether or not the sentence was the subject of an appeal under S.13 or S.19 of the said Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under the said Code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance.

(3) Where any such sentence as aforesaid has been altered in course of review or on appeal under the said Ordinance the sentence as so altered shall for the purposes of this section be deemed to have been passed by the Court which passed the original sentence.

Section 4 deals with the disposal of pending cases. It says that when the trial of a case, pending before a Court constituted under Ordinance 2 of 1942 has not been concluded before the date of commencement of Ordinance 19 of 1943, the proceedings shall be void and the case shall be deemed to be transferred, in a Presidency town to the Chief Presidency Magistrate, or else where, to the Sub-Divisional Magistrate, who may either inquire into or try the case himself, or transfer the case for inquiry or trial to any Magistrate subordinate to him, in accordance with the Code of Criminal Procedure. Section 5 provides for an indemnity. It says that no suit, prosecution or other legal proceedings shall lie against a servant of the Crown for or on account of or in respect of a sentence passed by him under the repealed Ordinance or in carrying out a sentence passed by a Court in exercise of the jurisdiction conferred by that Ordinance.

It will now be convenient to refer to the decision of the Federal court in A.I.R. 1943 F.C.36. Varadachariar J. who was officiating as the Chief Justice of the Federal Court and Zafrulla Khan J. were of the opinion that Ss.5, 10 and 16 of Ordinance 2 of 1942 were ultra vires the Governor-General as the legislative authority. Rowland J. disagreed with this opinion. It is not necessary for the purpose of deciding the present case to discuss the dissenting opinion. The majority opinion of course, prevails, and as we have already pointed out, the decision was immediately followed by the repeal of the Ordinance. The power of the Governor-General to legislate by Ordinance and to provide for Special Courts of the nature of those contemplated by the Ordinance was not disputed, but the learned Officiating

Chief Justice and Zafrulla Khan J. were of the opinion that it had not effected its purposes because the Ordinance had not repealed Ss.28 and 29, Criminal P.C. They also held that the Governor-General had no power to leave to executive officers an absolute and unrestricted discretion without legislative provision or direction laying down the policy or conditions with regard to classes of cases to be decided by the Special Courts. In this connection the learned Officiating Chief Justice said:

In the present case, it is impossible to deny that the ordinance making authority has wholly evaded the responsibility of laying down any rules or conditions or even enunciating the policy with reference to which cases are to be assigned to the ordinary Criminal Courts and to the Special Courts respectively and left the whole matter to the unguided and uncontrolled action of the executive authorities. This is not a criticism of the policy of the law - as counsel for the Crown would make it appear - but complaint that the law has laid down no policy or principle to guide and control the exercise of the undefined powers entrusted to the executive authorities by Ss.5, 10 and 16 of the Ordinance.

Mr T.R. Venkatarama Sastriar, on behalf of the petitioner, has contended that it follows from this decision that the Governor-General had no power to enact sub-section (1) of S.3 of Ordinance 19 of 1943. In order to decide the validity of this sub-section, the Court must examine the legislative powers which have been conferred upon the Governor-General by the Government of India Act, 1935. Schedule 9 to the Government of India Act, 1935, contains the provisions of the Government of India Act which are to continue in force with amendments until the establishment of the Federation. Section 72 of this Schedule, as it originally stood, stated that the Governor-General might in cases of emergency, make and promulgate Ordinances for the peace and good Government of British India or any part thereof, and an Ordinance so made shall for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature. By 3 and 4 George VI, Ch. 58, the time limit of six months was deleted. Section 102, Government of India Act, 1935, gives power to the Federal Legislature to make laws for a Province, or any part thereof, with respect to any of the matters enumerated in the Provincial Legislative List if a state of grave emergency is proclaimed. By a notification, dated 3rd September 1939 and issued by the Governor-General under S.102 of the Act it was declared that a grave emergency existed, and the Governor-General has now the power by Ordinance to legislate on all matters referred to in the Federal, Provincial and Concurrent Legislative Lists, which are set out in Sch.7 to the Act. The relevant entries in these lists are as follows:

Federal Legislative List — Entry No. 42: Offences against laws with respect to any of the matters in this list.

Provincial Legislative List — Entry No. 1: Public order (but not including the use of His Majesty's naval, military or air forces in aid of the civil Power); the administration of justice; constitution and organisation of all courts, except the Federal Court, and fees taken therein; preventive detention for reasons connected with the maintenance of public order; persons subject to such detention.

Entry No 2: — Jurisdiction and powers of all Courts except the Federal court, with respect to any of the matters in this list; procedure in Rent and Revenue Courts.

Concurrent Legislative List — Entry No. 1: — Criminal law, including all matters included in the Indian Penal Code at the passing of this Act, but excluding offences against laws with respect to any of the matters specified in List 1 or List 2 and excluding the use of His Majesty's naval, Military and air forces in aid of the Civil power.

Entry No. 2: – Criminal Procedure, including all matters included in the code of Criminal Procedure at the date of the passing of this Act.

It will be observed that the Governor-General can now by Ordinance legislate on all matters relating to Criminal law and procedure. The Calcutta case to which reference has been made is Misc. Case No. 65 of 1943. The Bench consisted of Derbyshire C.J. and Khundkar and Sen J.J. Derbyshire C.J. and Khundkar J. did not hold S.3 of Ordinance 19 of 1943 to be beyond the legislative powers of the Governor-General but they gave it an interpretation which seems to us, with great respect, to be inconsistent with its wording. Derbyshire C.J. considered that the effect of S.3 was that sentences already passed should continue to have effect as if they had been validly passed until they could be dealt with in appeal or reviewed under the provisions of the Code of Criminal Procedure. He held that it was the duty of the proper Court which had appellate or revisional jurisdiction in the areas in which the sentences were passed to have those convictions brought up before it and quashed and, further, to direct that the persons concerned should be dealt with according to law in the ordinary Courts according to the ordinary process of law, with the exception that where the sentence passed by a Special Court had been substantially served the Court should direct that no further proceedings be taken. He pointed to S.268, Criminal P.C., which directs that all trials before a Court of Session shall be either by jury or with the aid of assessors and said that if the Crown's contention was right, there must be a National jury and a National body of assessors. Where the trial is by jury an appeal lies only on a matter of law and therefore, in his opinion, a person tried by a National jury only got an illusory right of appeal. Khundkar J. substantially agreed.

Sen J. did not think that it was necessary to decide what interpretation should be placed on S.3 because in his opinion the section was *ultra vires*. He considered that as the Federal court had held that Governor-General, as a Legislature had no power to confer jurisdiction on the Special courts in the manner in which he had tried to confer it, it was not open to him as a subordinate or non-sovereign Legislature to enact either directly or indirectly that jurisdiction was good. In this connection he referred to certain Canadian cases decided by the Privy Council where it was held that a Provincial Legislature could not do indirectly what it could not do directly. In the course of his argument the learned Advocate-General, who appeared on behalf of the Crown, said that Sen J. had not kept distinct the absence of power from the question whether power which existed had been properly exercised. We think that this criticism is justified.

The judgment of the Patna High Court was delivered on 20th July 1943 by Brough J. who said that he found S.3 perfectly clear and but for the argument which had been addressed to them and the decision of the Calcutta High Court he would have contented himself with saying that it meant what it says. The Federal Court had not decided that it was *ultra vires* to set up Special Courts and give them jurisdiction. It was the method of giving them jurisdiction which was *ultra vires*. He could see no reason, therefore, why the Legislature could not ratify invalid acts if it could avoid the error of method. The legislative authority had in this case applied its own mind to the cases covered by the new Ordinance and these cases were ascertainable. He held that the new Ordinance could not be declared to be invalid by reason of the decision of the Federal Court on the old one and that the ratification was effective. In the first place Mr T.R. Venkatarama Sastriar asked us to accept the opinion expressed by Sen J., and in the alternative to accept the interpretation which Derbyshire C.J. placed on S.3. We find ourselves unable to take either of these courses.

It is not correct to describe the Governor-General as being a subordinate or non-sovereign Legislature in this connection. He has all the powers which the Federal Legislature would have had if federation had been adopted and he has all the powers of a Provincial Legislature. It is true that Parliament has power to amend the Government of India Act, 1935, but while it stands as at present the Governor-General constitutes a sovereign Legislature with regard to the matters referred to in the three legislative lists, and as we have seen, full power has been given to the Governor-General to legislate without restriction in matters of criminal law and of the procedure to be adopted in trying Criminal cases. The Federal Court acknowledged that the Governor-General had the power to appoint Special Courts of the nature of those mentioned in Ordinance 2 of 1942 and the Ordinance was held to be invalid only because the precaution of repealing certain sections of the Criminal Procedure Code had not been taken and there were no rules governing the allocation of cases. The errors or omissions which rendered Ordinance 2 of 1942 invalid, cannot, in our opinion, restrict the Governor-General in promulgating a new Ordinance.

Section 3 (1) of the later Ordinance says that sentences which had been passed under the repealed Ordinance before its repeal shall continue to have effect as if the trials at which they were passed had been held in accordance with the Criminal Procedure Code. If the Governor-General's powers are unrestricted as we hold them to be, he must have power to make such a provision. Of course, the Governor-General has not power to do indirectly what he cannot do directly. This principle has been definitely established in the cases to which Sen J. referred, but the Governor-General in our opinion, is not attempting to do something indirectly which he had not power to do directly. He could, if he had thought fit, have amended Ordinance 2 of 1942 to remedy the defects which the Federal Court had pointed out, and we think that he has full power to say that trials which were not held under a particular law shall be deemed to have been held under that law.

Mr Venkatarama Sastriar has agreed that the question to be decided, put shortly, is whether the Governor-General has power to declare by Ordinance that sentences passed by Special Courts should be deemed to have been passed in trials properly held under the Criminal Procedure Code and the short answer which he has given to this question is that the Governor-General has not the power because the cases which gave rise to the sentence were placed before the Special Courts by officials to whom there had been no proper delegation of power in this behalf. We cannot accept this as a sound reason for declaring the later Ordinance to be invalid. As we have already indicated the fact that there was a defect in the earlier Ordinance cannot lessen the very wide powers which the Governor-General possesses when he decides to legislate further. The powers only arise when a grave emergency exists but the Governor-General alone can decide whether an emergency has arisen and a declaration by him to this effect cannot be questioned; *see 12 Lah. 280*.

The judgment of Lord Halsbury in 1907 A.C. 93 seems to us to have direct bearing on the question now under discussion. There the petitioner was indicated for the crimes of sedition and public violence before a Court martial after a declaration of martial law. He wished to appeal to the Privy Council against his conviction and the sentence which had been passed against him. His objections to the trial were he was not a Military man, he had not been taken in the field, he had never taken up arms against the Government, the state of the country was not such as to justify his being tried before a Court martial and the Civil Courts before whom he had a right to be tried had in no way been interrupted in their functions and were then sitting. The Natal Parliament passed an Indemnity Act, S.6 of which said:

All sentences passed by any Courts martial or by any Court or person administering martial law under the authority of the Governor or the commandant of militia in Natal, or by any military officer purporting to exercise authority in that behalf, since the date of the aforesaid proclamation of 9th February 1906, including fines and other punishments inflicted by military officers in the field, are hereby confirmed and made and declared to be lawful, and in so far as the same shall not have been already carried into effect, shall be deemed to be final sentences passed by duly and legally constituted Courts of this colony, and no appeal shall lie in respect of same, but they shall be and remain in force and shall be carried out in the same manner as the sentences of the Courts of law in this colony.

Leave to appeal was refused and in delivering the judgment of the Privy Council Lord Halsbury said:

It is by this time a very familiar observation that what is called 'martial law' is no law at all. The notion that 'martial law' exists by reason of the proclamation – an expression which the learned counsel has more than once used – is an entire delusion. The right to administer force against force in actual war does not depend upon the proclamation of martial law at all. It depends upon the question whether there is war or not. If there is war there is the right to repel force, but it is found convenient and decorous, from time to time, to authorize what are called 'Courts' to administer punishments, and to restrain by acts of repression the violence that is committed in time of war, instead of leaving such punishment and repression to the casual action of persons acting without sufficient consultation, or without sufficient order or regularity in the procedure in which things alleged to have been done are proved. But to attempt to make these proceedings of so-called 'Courts martial' administering summary justice under the supervision of a military commander, analogous to the regular proceedings of Courts of justice is quite illusory.

Later on, in his judgment, Lord Halsbury observed:

An Act of Parliament has been passed in Natal which in terms enacts the legality of the sentences in question, and provides that they shall be deemed to be sentences passed in the regular and ordinary course of Criminal jurisdiction. This board has no power to review these sentences, or to inquire into the propriety or impropriety of passing such an Act of Parliament. The only thing for persons who are subject to such an Act of Parliament to do is to obey. The question in this case arises under the Natal Act of Parliament in respect of offences committed in Natal, which Act has been assented to by the Governor and, having the force of law, is binding on their Lordships. The language of the Act appears to their Lordships to be subject to no question of doubt or ambiguity at all.

The Special Courts set up by Ordinance 2 of 1942 were no Courts at all, as they had not been validly constituted. They had no more legality than the Courts martial to which Lord Halsbury referred. If the Natal government had power to pass an Act validating sentences imposed by Courts which had no legal existence, then the Governor-General has the power, and the Privy Council held that the Natal Parliament had the power. There is a Madras Act which may be aptly referred to here. It is the East and West Tanjore Sessions Divisions (Validation) Act, 1931, which was passed in order to legalize trials and sentences which it was feared had been held and passed without jurisdiction. Section 3 of this Act reads as follows:

Notwithstanding anything contained in sub-section (1) of S.7, Criminal P.C., 1898, the Sessions division of East Tanjore and the Sessions division of West Tanjore in the revenue district of Tanjore and the Courts of Session established for each one of the said Sessions divisions, shall be deemed to have been and to be validly constituted and no proceeding of the Courts of Session of the said Sessions shall be questioned merely on the ground that the limits of neither of the said Sessions divisions were or are conterminous with the limits of a district.

It has not been suggested that the Madras Legislature had no power to pass this Act. Is not the present position analogous? Derbyshire C.J. considered that there was much room for criticism of S.3 of Ordinance 19 of 1943, because the Governor-General had not adopted the language to be found in the Decrees and Orders Validating Act, 1936 (Act 5 of 1937), but the fact that the section does not speak specifically of validation is, in our judgment, no reason for not giving effect to the words used. We are also unable to share the opinion that the provision with regard to appeals is illusory. In this case the Court is not called upon to decide what are the full powers conferred by sub-section (2) on appellate and revisional Courts. The Court is merely concerned with whether the Governor-General had the power to declare that sentences passed by Special Courts shall be deemed to have been passed in trials held under the Criminal Procedure Code. But supposing that a case tried by a Special Court would have been tried with a jury, if the Criminal Procedure Code had applied, and that the appellate Court functioning under sub-section (2) of S.3 of Ordinance 29 of 1943 has no right to inquire into the finding of fact, beyond ascertaining whether there is evidence to support it, the appeal would not necessarily be illusory. It would still lie on a question of law. It may be that the intention of the ordinance making authority was to allow an appeal on the facts in such cases. We express no opinion on this question, but all doubt will be removed and much judicial time would be saved if an Ordinance would be promulgated clarifying the position in this respect. For the reasons given we hold that sub. S(1) of S.3 is not invalid and that the section means what it says. The result is that application for the issue of writ of certiorari is dismissed and the petitioner is left to an appeal under S.3 (2). A certificate will issue under S.205, Government of India Act, 1935. C.R.K./R.K.

Application Dismissed.

1 Doc 45 above.

2 Doc 50 above.

3 Doc 34 above.

4 Ibid



72: Government of Bengal to the Government of India (Case of Kishori Lal Datta)

Govt. of Bengal (Home) File No. W554/43
[Bengal State Archives]

Government of Bengal
Home Department

Jails
No. 9659 H.J.

Express Letter

From
A E. Porter, Esq., C.I.E., I.C.S.,
Addl. Secretary to the Government of Bengal.

To
The Additional Secretary to the Government of India.
Home Department.

Calcutta, the 13th August, 1943

Subject: Proposed detention under Defence of India Rule 26 (1) (b) of Kishori Lal Datta¹
son of Sarat Kumar.

Particulars are enclosed in a sealed cover of Kishori Lal Datta son of Sarat Kumar. This individual is in detention in Bengal under Defence Rule 129. The maximum period of his detention will expire on the 15th August 1943. There is no information upon which he can be presented in Court, but this Government would have directed his continued detention under Defence Rule 26 (1) (b) if it had been possible to use the powers conferred by that Rule in Bengal. The undersigned is directed to request the Government of India to issue orders for his detention under Defence Rule 26 and to express regret for this very short notice given. In anticipation of such orders and of the consent of the Chief Commissioner, Delhi, he is being transferred to Delhi in order that he may be outside the jurisdiction of the High Court before his detention under rule 129 expires.

A.E. Porter,
Addl. Secy. to the Government of Bengal.

No. 9658/1.H.J

Copy forwarded to D.I.G., I.B., with a request to send him under escort to Delhi at once.

No. 9658/2 H.J.

Copy forwarded to the Chief Commissioner, Delhi, with a request that he will be good enough

to consent to the transfer of this prisoner under D.I.R. 129 (5) in the circumstances. The failure to consult him earlier is regretted.

A.E. Porter

Addl. Secy. to the Government of Bengal.

Calcutta,
The 13th August, 1943.

1 See earlier Document 69 on this case.

73: Official Notings (regarding interrogation) (extracts) (13.8.43 to 27.8.1943)

File No. 44/2/43 – Home Poll (I)
[NAI]

In the course of conversation on this subject¹ on August 7th, Additional Secretary said that although he did not consider that a second approach to Provincial Governments would produce any more satisfactory results, he would like to try again by writing demi-officially to Chief Secretaries in order to arouse their personal interest in the matter and so influence provincial Special Branches to take up interrogation work seriously and on more scientific lines than are at present followed in most provinces.

To give some idea of the methods of interrogation which have proved successful in the past, I attach a brief note² which might be used as an enclosure to Additional Secretary's letter. What is required, I think, is that Provinces who have no staff specially ear-marked for important interrogations should select two or three men of the right type and possessed of the necessary intelligence qualifications and employ them as necessary for carrying out special interrogations of selected individuals when occasion arises. It is not suggested that these men should be set apart solely for this work, as that would more often than not probably mean their sitting idle for considerable periods; there is every advantage in their being engaged in normal intelligence duties, provided that when occasion arises their services can be diverted for the purpose we have in mind. I might add also that although the attached note deals with interrogation from the point of the assistance it can give to prevention and detection of political crime, the general principles apply with equal force to scientific interrogation as an aid in ordinary crime work. The advantages of police over jail custody during interrogation has been referred to in H.D.'s earlier letter, but might perhaps be mentioned again.

Pildich
13.8.43.

H.D. (Sir R. Tottenham).

N.B. U/O No. 12/79/42, dated, 14th August 1943.

I had intended to link the draft with the letter which it is proposed to issue to Provinces about conditions of detention under Defence Rule 129. The draft letter to Chief Commissioners on the latter subject is under submission but has not yet been approved and I do not wish to

delay this file any longer. I therefore put up a separate draft¹ in which I have referred to the fact that we are about to address provinces on the connected subject of conditions of detention under the rule.

2. I should like to offer in the draft to help Provinces in training their interrogators, if there were any prospect of being able to fulfill this offer.

S.J.L. Olver
19.8.43

D.I.B. add sec.
Additional Secretary.

D.I.B. should see as proposed. I am not sure whether this need go to all Provinces. Indeed it might be better to send it only to those in the first instance where the need is greatest and which D.I.B. may be able to visit in the fairly near future. We should be glad of advice on this point.

Offers of assistance in training or possibly offers to take on a few selected individuals from provinces for interrogation by an existing trained staff (to show what might be done) could I think better be conveyed by word of mouth

R. Tottenham
20.8.43

D.I. U O No. 44/2/43 - Poll (I) dated 20/8/43.

I have consulted the Bureau. Deputy Directors who are most interested in this matter and I agree with their views that it would be better to go to all Provinces. I doubt if D.I.B. will be able to go on tour in the near future. At any rate if all are addressed those who agree may constitute a majority, a fact which might influence in the end.

The Punjab would be most suitable training place. If H.M. would like me to do so I will sound the Punjab C.I.D. as to whether they would be prepared to undertake anything in the required lines I do not think we could make any offer to other Provinces by word of mouth or otherwise without the Punjabi agreement.

E.M. Jenkins
26.8.43

1 Subject of interrogation 2 and 3 Not printed.

74: Official Notings on the desirability of Advisory Committees (17.8.1943 to 18.8.1943) (extracts)

File No. 44/57/43 - Home Poll (I)
[NAI]

(Omitted: Opening para of Tottenham's observation on Sir Harold Derbyshire's remarks.)

I do not think we should flirt for a moment with the idea of advisory committees which I should say were quite unsuitable for the conditions in the country.

R. Tottenham
17.8.43.

I agree that the observations of the High Court¹ which are under discussion do not relate to any judicial issue coming before them and that as an expression of opinion they have no binding force. At the same time it must be recognised that comments of this character coming from a high judicial authority have considerable effect on the public mind and if reported to Parliament would no doubt evoke considerable comment there. They must, therefore, be considered with the respect they deserve.

2. I also agree that for the reasons given in the Law Member's note of the 7th October 1932 in F. 31/10/32 – Poll the High Court have misconstrued the meaning and effect of the preamble of Regulation III. The operative part of that Regulation, so far as it concerns the point at issue, is section 5 which reads.

The officer in whose custody any State prisoner may be placed is to forward, with such observations as may appear necessary, every representation which such State prisoner may from time to time be desirous of submitting to the Government.

While, however, the preamble has no independent operation, it is part of the statute and it must be supposed to throw light on the manner and spirit in which the operative clause is to be used. The relevant portion of the preamble runs as follows:

And whereas the ends of justice require that, when it may be determined that any person shall be placed under personal restraint, otherwise than in pursuance of some judicial proceeding, the grounds of such determination should from time to time come under revision, and the person affected thereby should at all times be allowed freely to bring to the notice of the Government all circumstances relating either to the supposed grounds of such determination, or to the manner in which it may be executed.

It must naturally, therefore, be supposed that it is the intention of Regulation III that the cases of persons placed under restraint under that Regulation should be revised from time to time in the light to representations made by them. The High Court have wrongly taken this preamble to mean that the actual grounds of detention would be furnished to the state prisoner. But although, as pointed out by the Law Member, this reading is wrong and although, as often pointed out in other notes, any obligation to furnish precise information to the prisoner would be embarrassing, the High Court have also been able to point to the provisions of Regulation 18B of Great Britain in which clause (5) specifically places the duty on the Chairman of the Advisory Committee to inform the objection of the grounds on which the order has been made against him and to furnish him with such particulars as are in the opinion of the chairman sufficient to enable him to present his case. It must be supposed that in England also some of the grounds of the order might be based on secret information comparable to what is used in India: but nevertheless it has not been considered impossible by Parliament to enjoin the communication to the person affected of such particulars as will enable him to represent his case. We are, therefore, not on strong ground in regarding the communication of sufficient particulars as an insuperable obstacle

3. While it must be conceded that there are times, such as the period following the rebellion of August 1942, when Provincial Govts and executive officers have their hands too full to follow a procedure which in England was intended only for very occasional cases, such periods of emergency are not likely to be of indefinite duration and when circumstances permit we may be regarded as under some obligation to follow a procedure more in accordance with the principle enjoined by Parliament. I have for some time felt that the provisions of rule 26 in so far as they relate to detention are defective in several respects, i.e.

- (1) The detention once ordered is of indefinite duration;
- (2) No provision is made for periodical review of cases and
- (3) No explicit provision is made giving the security prisoner a right to be heard on his own behalf or to be informed of the reasons for his detention.

In the latter respect Addl. Secy. has pointed out that there is nothing to prevent a security prisoner from making a representation at any time; but we may, I think, feel considerable doubt as to whether these representations are always forwarded to the Provincial Government itself or whether, if they are so forwarded, they receive very full attention in the absence of a definite requirement to that effect.

4. In regard to the 1st and 2nd points, I am inclined to think that rule 26 should have contained a clause to the following effect:-

No order of detention passed under this rule shall continue in force for more than 6 months, provided that the Provincial Government after further consideration of all the circumstances of the case including any representation that the detained person desires to make, may extend the period of detention for periods not exceeding 6 months at a time.

If such a clause were inserted it might possibly meet all the requirements of the case. But in order to conform more nearly to the principles observed in England and to the observations of the Calcutta High Court certain other clauses might possibly be added on the following lines

As soon as may be after an order of detention has been passed the Provincial Government shall inform the person detained of the grounds on which the order has been made against him and shall furnish him with such particulars as are in the opinion of the Government sufficient to enable him to present his case.

And a further provision

It shall be the duty of the Provincial Government to secure that any person detained under this rule shall be afforded the earliest practicable opportunity of making to the Provincial Government representations in writing with respect to his detention and shall be informed of his right to do so.

5 None of these suggested provisions contemplates the constitution of advisory committees, such as exist in England, and I agree with Additional Secretary that such committees would not be possible in the circumstances of this country; but at the same time they would put the obligations in a binding form and would satisfy the public both here and at home that the elementary rights of persons arrested without trial were observed. I am aware that there is a tendency among Provincial Governments, to regard as a sign of weakness any attempt to limit their absolute freedom to detain a person indefinitely under 26 or to allow a prisoner to have any say in the matter. As I had occasion to point out before, however, when the review of cases of security prisoners was under consideration, provisions which are inherently in accordance with the public conscience and with the practice observed in England do not weaken, but rather strengthen our position in holding persons in detention without trial. I would not contemplate any relaxation whatever in our policy of detaining persons whose activities, if they were at liberty, would in our judgment be likely to interfere with the prosecution of the war. In the case of persons who are detained on good grounds the periodical renewal of orders under the 1st suggested clause and the opportunity of making representations under the other two clauses would not in practice prevent us from holding in detention anyone whose detention was really necessary. The main danger would be that we or Provincial

Governments would be flooded with long-winded representations amounting to little more than political manifestos, for which some kind of publicity would be sought; but if there were no advisory committees and the transaction rested entirely between the security prisoner and the Government responsible for his detention there would be no excuse for publicity and little time need be wasted over representations which were not very material to the case. On the other hand, the opportunities of representation or review so afforded might assist in revealing cases in which some mistake had been made and would at least place the Provincial Governments on firmer grounds in prolonging detention in individual cases.

6. These suggestions should be regarded as tentative at the present stage. Additional Secretary might discuss them in the first instance with Defence and Legislative Departments and if we conclude that any of them are necessary Provincial Governments would no doubt have to be consulted before they were introduced. We are, however, responsible for the form of the Defence of India Rules and if as a matter of policy some amplification of rule 26 is necessary to meet legitimate criticism we must ourselves take the responsibility for limiting the powers conferred on Provincial Governments in this matter.

R.M. Maxwell.

18.8.43.

1 See Doc. No. 47 above

75: Case of Hari Sadhan Sen¹

Govt. of Bengal (Home) File No. W502/43
[Bengal State Archives]

Government of Bengal
Home Department
Defence.

No. 10066.

Order

Calcutta, the 19th August 1943.

Whereas, by order No. 8038 Defence dated the 3rd July 1943, Hari Sadhan Sen, son of Satoda Kumar Sen was directed to be detained in custody under rule 129 of the Defence of India Rules, in the Presidency jail, until the 23rd day of August 1943.

And, whereas, it is expedient that the said Hari Sadhan Sen should be removed to Delhi.

Now, therefore, in exercise of the powers conferred by sub rule (5) of rule 129 of the Defence of India Rules, and with the consent of the Chief Commissioner, Delhi, the Governor is pleased to direct that the said Hari Sadhan Sen shall be transferred forthwith to Delhi under

escort and that he shall there be dealt with under the directions of the Chief Commissioner, Delhi.

By order of the Governor,
19.8.43.

Addl. Secy. to the Government of Bengal.

To
The Supdt.,
Presidency Jail.

1 Earlier references - Docs 67 & 68.

76 Subject — Statement of cases involving the validity of ordinances (dt 20.8.1943-9.9.1943)

File No. 256/43 - Home Poll (I)
[NAI]

Present Position of the Case

II Ordinance II of 1942 (Special Criminal Courts Ordinance) was declared *ultra vires* by the Calcutta High Court on 22-4-43 in the case of Benoari Lal Sarma and others. The Federal Court upheld this judgement on 4-6-43, and have granted to the Govt. of Bengal, leave to appeal to the Privy Council. Steps are being taken in the Federal Court to print and transmit the record to Privy Council.

Grounds on which decision is based

The ordinance was invalid in so far as Sections 5, 10 and 16 thereof permitted persons, other than duly authorized legislatures, constituted under the Constitution Act to repeal *ad hoc* certain sections of the Code of Criminal Procedure and of the Letters Patent of the High Courts.

III Ordinance XIX (5-6-43) issued to repeal Special Criminal Courts Ordinance and to validate sentences already passed thereunder, has been held invalid by the Calcutta High Court on 12-7-43 in the case of Sushil Kumar Vs. Emperor.¹ This Ordinance has been subsequently held *intra vires* by the Patna (on 20-7-43),² Madras (3-8-43)³ and Nagpur High Courts and the Govt. of Bengal have been advised to appeal to the Federal Court against the Calcutta judgement. Bombay Govt. who anticipate a similar challenge in the Bombay High Court, have been advised to request the High Court to defer order on this point pending decision in the appeal expected to be filed in the Federal Court by Bengal Govt. Four appeals from the decisions of the Patna High Court have been filed in the Federal Court.

Grounds on which decision is based

1. Section 3(1) of the Ordinance XIX does not validate trials or convictions under the repealed Ordinance but merely purports to give to sentences passed thereunder, continuing effect until they are reviewed and dealt with in appeal under the ordinary law.

2. It is ultra vires of any Indian legislative authority to validate sentences passed at trials held in pursuance of provisions which, on relevant finding, no Indian legislative authority had power to enact.

Present position of the case

1. Ordinance XIV of 1943 (28.4.43) purporting to validate Defence of India Rule 26 (which was declared Ultra vires by the Federal Court on 22.4.43 in Talpade's case)⁴ has been held invalid by the Calcutta High court in their judgment dated 3.6.43 in the case of Shib Nath Banerji and eight others.⁵ This judgement is to come up in appeal before the Federal Court on 17.8.43, along with appeals against judgements of the Alld., Madras and Lahore High Courts, who have held the Ordinance valid.

Grounds on which decision is based

1. Section 2 of the Ordinance is invalid as the Governor General has no power to repeal or amend an Act of the Central Indian Legislature.
2. If section 2 and all section 3 which is merely pendant from section 2, must necessarily fall.
3. The detention orders in the nine cases were not proper in that the Governor was not personally satisfied that detention was necessary.

Present position of the case.

1. The appeals were heard by the Federal Court and Judgement was pronounced on 31.8.43. The appeals from the Calcutta High Court (which were preferred by the Crown) were dismissed as also the appeals from the other three High Courts (which were preferred by the detenus). Leave to appeal to the Privy Council has been granted in the cases from the Calcutta High court on application from the Bengal Government.

Grounds on which decision is based.

1. Section 3 of the Ordinance is valid and validates detention orders already passed.
2. It is not necessary to consider the validity of section 2 of the Ordinance.
3. The detention orders in the cases from the Calcutta High Court are improper because the Governor was not personally satisfied that detention was necessary.

Notes by senior officials.

Home Department.

2. . . . From our point of view the progress of item II before the Privy Council is most important and I am still not quite clear who is in charge of the appeal from the Government point of view.

R. Tottenham, 20/8/43.

Notes in Legislative Department.

1. Judgement was pronounced by the Federal Court in the case of Ordinance No. XIV of 1943 on 31.8.43.⁶ Four appeals have been filed in the Federal Court regarding Ordinance No. XIX of 1943.

2. With regard to item II the Agent of the Bengal Government is charge of the matter. The record is being printed and no further steps can be taken in the appeal until the record is printed and transmitted to the Privy Council.

K.G. Bhandarkar 4.9.43.

Asst. Solicitor.

We must ask to be kept in touch with further progress.

R.T. 9/9/43.

1 Doc. 45 2 Doc. 50 3 Not printed but see Document 71. 4 Doc. 27
5 Doc. 33 6 Doc. 83

77 : Case of Jasoda Kumar Das Gupta¹

Govt. of Bengal (Home) File No. 526/44
[Bengal State Archives]

Government of Bengal
Home Department

Defence.

No 10178.DE.

Calcutta, the 21th August, 1943.

Order

Whereas, by order No. 8316/Def. dated the 10.7.1943, Jasoda Kumar Das Sharma, alias Das Gupta, son of Surendra Kumar Das Gupta was directed to be detained in custody under rule 129 of the Defence of India Rules, in the Midnapore Central Jail, until the 26th day of August 1943

And, whereas, by order No. 1010/Def. dated the 20th August 1943, the said Jasoda Kumar Das Sarma, alias Das Gupta was directed to be transferred to the Alipore Central Jail.

And, whereas, it is expedient that the said Jasoda Kumar Das Sarma alias Das Gupta should be removed to Delhi.

Now, therefore, in exercise of the powers conferred by sub-rule (5) of rule 129 of the Defence of India Rules, and with the consent of the Chief Commissioner, Delhi, the Governor is pleased to direct that the said Jasoda Kumar Das Sarma, alias Das Gupta, shall be transferred forthwith to Delhi under escort and that he shall there be dealt with under the directions of the Chief Commissioner, Delhi.

By order of the Governor,

Addl. Secy. to the Government of Bengal.

To The Superintendent,
Alipore Central Jail

78: Case of Tapas Kumar Basu Mullick

Govt. of Bengal (Home) File No. W586/43
[Bengal State Archives]

Government of Bengal
Office of the Deputy Inspector General of Police,
I.B., C.I.D.

No. 25120
1087-43/Comm.

dt 24-8-43

To
A.E. Porter, Esqr., C.I.E., I.C.S.,
Addl. Secy to the Government of Bengal, H.D.

Dated August 24th 1943.

Dear Mr Porter,
Reference your Memo. No. 9096/1 Def., dated 28.7.43.¹

I enclose herewith the brief history of Babu Tapash Kumar Basu Mallik, @ Raghu, s/o Babu Prafulla Chandra Basu Mallik,² of Hooghly and Calcutta, recommending his indefinite detention under Regulation III of 1818, as he is an active member of the Congress Socialist Party.

Yours Sincerely,

For Dy. Inspector General of Police,
I.B., C.I.D.

[JWP/OP.
24.8.43.

¹ Not printed – See Doc. 55.

² Doc. Not printed.

79: Official Notings regarding treatment of security prisoners (dt 24.8.1943–26.8.1943) (extracts)

File No. 44/57/43 – Home Poll (I)
[NAI]

Home Department.

... Sir George Spence came this afternoon but we found that Mr Ogilvie has left Delhi. Mr Wakely was ill. So no conference took place.¹ Sir George Spence told me that he had no

views to express on behalf of the Legislative Department except that he thought it would be inappropriate to impose any rigid time limit on the period of detention which was either necessary or unnecessary according to the facts of the case and not according to the time that had elapsed since the order was made. Defence Dept. may be asked to record their comments on the proposals as a whole and to fix another conference. I think the former would be preferable.

R. Tottenham
23.8.43.

Defence Department.
H.D.L. No. 44/57/43
Poll (1) dated 23.8.43.

Notes in Defence Department.

We may agree that D.I.R. 26 should be amended providing (1) periodic review of cases of a security prisoner and (2) giving such prisoner a right to be heard on his own behalf or to be informed of the reasons for his detention, on the lines as indicated in para 4 of the Hon'ble Home Member's minute of the 18th August 1943.⁴ As to the proposed provision in that rule imposing a time limit in respect of the period of detention it appears that in the majority of cases of detention the time limit may have to be extended again and again. In the result, most of the detention orders will, in effect, be of indefinite duration. For instance if 'A' is detained for a period of 6 months and on expiry of that period his case is reviewed with the result that the period of his detention is extended for another 6 months and this process of review goes on and on each review it is considered by the detaining authority that his detention is necessary with a view to preventing him from acting in a manner prejudicial to the defence of British India etc. He continues to be detained indefinitely. The proposed provision of periodical reviews however, give the detaining authority an opportunity to revise the detention order in a particular case setting the detainee at liberty if his release is not considered to be prejudicial to the efficient prosecution of the War etc and this might achieve the object desired. The intention of imposing a time limit on detention appears to be that these detention orders should be reviewed after every 6 months; if so, the object could be achieved by issuing instructions to the Provincial Governments to that effect.

(2) In the event of the Calcutta High Court's decision invalidating Ordinance No. 14 of 1943 validating D.I.R. 26 being upheld by the Federal Court, it is proposed to issue an ordinance known as 'Bartley Ordinance' making the provisions of rule 26 as substantive law to be applied to Bengal and Assam. If therefore rule 26 is to be amended as proposed in para I above it might be necessary to make such provision in the 'Bartley Ordinance'.

The issues raised in this case are:

- (1) Whether rule 26 of the Defence of India Rules should be amended so as to admit of a review of the cases of detention and the grounds of their detention?
- (2) What form this amendment should take?

2. The answer to the first issue raised above appears to be definitely in the affirmative. As regards the second the form which the amendment of the rule should take — it appears to be the intention that.

- (1) Additional provisions should be incorporated in rule 26 to make it incumbent on

the appropriate Government to inform the detainee of the grounds of his detention – only so much to be communicated as would enable him to show cause why he should not further be detained, and.

- (2) As soon as thereafter as possible or as soon as the representation of the detainee has been received by the Government it shall proceed to review the case, the grounds of detention and pass such orders as it may deem fit.

3. It is presumed that the suggestion of Sir George Spence that there should be no statutory time limit on the period of detention is acceptable and so no further comments are needed on it.

4. There are certain issues which will have to be considered now that we are contemplating enlargement of the scope of rule 26 and to a certain extent liberalizing its provisions. The amendments contemplated above will certainly evoke criticism in the press; comparisons will be drawn between the provisions of the U.K. regulation and the new amendment made to D.I.R. 26. So it would be necessary to be prepared with some sort of answer should there be such insistent public criticism on the above lines.

5. One other question that arises is how far should the authorities subordinate to the provincial Governments or to the Chief Commissioner be empowered to exercise powers of detention under D.I.R. 26? I believe Home Department have asked all provincial Governments to withdraw the delegations and except for Assam all the rest have complied with the request. The issues therefore, are.

- (a) If we should not abolish concurrent power possessed by the Provincial Governments and instead delegate power to the Provisional Governments with a rider that they shall not further delegate the same except under circumstances of grave emergency. From sub-section (4) of section 2 of the Defence of India Act it appears to be open to the Central Government to specify the circumstances and conditions under which a delegated power may be exercised; or alternatively,
- (b) Whether we should issue a direction to the Provincial Governments not to delegate powers under rule 26 to subordinate authorities except under conditions similar to those laid down in Defence Regulation 18BB.

The very amendment contemplated above would necessitate the curtailment of the powers of District Magistrates and to control the unfettered exercise of discretion by them to detain persons indefinitely under rule 26. This power was conferred on them by a simple delegation which does not in any way restrict the exercise of the power. I should venture to suggest, therefore, that the Home Department should consider this aspect of the case also and say whether they prefer the alternative (a) or (b) suggested above or whether they would like to proceed on the lines of the U.K. D.R. 18BB; otherwise delegation of powers under rule 26 (if made without any qualification) may mean power to state the grounds of detention, receive representations and decide the case as if the District Magistrate himself were the Provl. Government. (I am assuming of course that in centrally administered areas the Chief Commissioners will occupy a position similar to the Provincial Governments within their jurisdictions.)

(1) I agree, with some hesitation, that we shall not limit the duration of detention order to six months or any other defined period. The obvious advantage of limitation is that it would compel the order-making authority to review each case at intervals of not more than six months and unless compulsion were applied we may suspect that some cases, at least, would not be reviewed as often as they might be. Sir George Spence's view as reported in Sir Richard Tottenham's note of 23rd August might perhaps be opposed on the ground that, when the order is made, the authority making it, acts in the light of conditions prevailing at the time, and that these may change, so that an order of indefinite duration cannot be justified. But the answer to both these points seems to me to lie in accepting the principle that every order should be reviewed as a matter of course, without any motion by the person detained, as soon as the relevant conditions change. They are more likely to change after six months in an individual case than after any other period that could be selected; while prescribing a certain period would tend to mean in practice, that a review was carried out every six months and not in between times. I think that the proper way to secure review, apart from special reviews on the application of the person detained is by executive instructions and there might be advantage in issuing instructions that every case should be reviewed at intervals of not more than six months subject to the principle suggested above being always borne in mind.

(2) I agree that, apart from reviews undertaken on the initiative of Government, provision should be made to give the person detained on clearly defined right to make representation against his detention. I also agree that such representations should be considered by Government (not by any subordinate local officer) and not by a committee though, as Mr Kaiwar points out, this divergence from the English scheme may be criticised and have to be publicly justified. The form of any justificatory statement would need careful consideration.

(3) On the question of supplying grounds, I agree that the persons detained should be furnished with such particulars as are necessary to enable him to present his case, but presume that this could be qualified by a condition that particulars which might disclose secret information or sources of information should not be furnished though they might be necessary to the presentation of case. I am not however sure whether such particulars should be furnished to a person automatically as soon as he is detained. It appears from paragraphs (4) and (5) of Defence Regulation 18B that this is not the practice in England; there the person detained makes objection to a Committee and it is not apparently till he is brought before the committee (as I presume he is) that he is informed of the grounds on which an order has been made against him. It may be possible to verify what the procedure actually is. There may be advantage in not supplying grounds till after a representation has been made, first, the person detained may disclose grounds or information which were not previously known to Government, and in any case is likely to give valuable indications of the grounds of his feelings which might not appear if he were simply attacking a case stated by Government; secondly, presenting him with a charge-sheet would make representations almost automatic. It would, however, probably be difficult to provide, or to justify a provision, to the effect that the Provincial Government if on receiving an application it considered that the applicant did not know the true grounds for his detention, should supply him with a indication of such grounds in order to enable him to try again, after having wasted valuable time. I would therefore agree that the grounds should be disclosed forthwith: this would certainly be much better from the publicity point of view.

A point that may be raised is whether a detained person should be allowed legal advice

in making his objections. I do not know what the practice is in England, but *prima facie* I would say that as a person is detained on grounds of fact or supposed fact, not of law, there is no reason for allowing access to legal advice.

(4) Paragraph 5 of Mr Kaiwar's note raises a question which I think should certainly be considered in this connection. I have assured above that representation will in any case, by whomsoever the detention order may have been made, be made to and considered by the Provincial Government which will then in many cases at least, be forced in effect to review orders made by authorities subordinate to it. I think that a provision to the effect the orders made by subordinate authorities (who should only make orders themselves in exceptional emergencies) should have effect only for a limited period unless confirmed by the Provincial Government would be reassuring both to the Courts and to public opinion. One might anticipate that a District Magistrate's order and representations against it would commonly come up for the consideration of the Provincial Government at the same time. I do not know how carefully District Magistrates have in practice distinguished between the cases of rule 26 and rule 129, the latter of which contains a time limit; but in my view the consideration which made confirmation desirable when a subordinate officer effects an arrest under rule 129 apply equally when any authority other than the Provincial Government itself makes an order under rule 26.

Such a limitation could not, I think, be achieved by an amendment of the rule, since such an amendment could not I presume treat the power of delegation given by section 2 (5) of the Defence of India Act. If so, a directive would perhaps be the only, though an unsatisfactory, way out. There is, however, something to be said, to my mind, for bringing out the 'Bartley Ordinance' expanded to cover the points discussed here, irrespective of decisions as to the validity of rule 26 which may be taken by the Federal Court. To do so could evince the determination of Government to make the position absolutely clear for the future and to provide to fairest conditions that circumstances allow. It would also, to some extent, counteract criticism on the ground that the liberty of the subject is at the mercy of the executive authority which has power to make rules, since the Governor-General making an ordinance is presumably a legislature, but, whatever the stands of the Governor-General, this course might perhaps be objected to on the ground that it would expose the Governor-General in his discretion to criticism now probably levelled against Government (this objection, however, applies to the 'Bartley Ordinance' in any case, though it has not been considered in that connection).

3. As regards the point made in para 2 of office note. I assume that any modifications decided upon here would be incorporated in the 'Bartley Ordinance' if that Ordinance were promulgated; Obviously, however, they will have to wait if the Ordinance has to be brought out in the next few days.

4. Home Department will possibly consider ascertaining D.I.B's views. These proposals might conceivably affect his interest in detained persons. War Department are also in some degree interested since some of their officers are exercising powers under rule 26.

L.J.D. Wakely.
25/8/43.

Home Department,
(Sir R. Tottenham)
8412.Do/43. 25/8/43.

Home Department

Mr Wakely's note covers this case very thoroughly. At this stage I would merely add my personal views regarding the points raised in sub-paras (1) to (4) of his paragraph 2.

- (1) The Home department is not of course to be taken as having in any way agreed to what I recorded in my note of August 23rd as Sir George Spence's view. I am not even sure whether I have expressed that view quite correctly and in any case he would probably prefer to put it in his own words. My own personal view is that it would probably be better to provide specifically for the review of all cases at intervals of not less than six months, than to put it in the way suggested at the beginning of para 4 of H.M.'s note of August 18th.
- (2) I agree with Mr Wakely, but I see no reason why we should put out any justificatory statement for not adopting the system of advisory committees.
- (3) I agree, on the whole, that persons detained should be informed at once of the grounds for their detention in sufficient detail to enable them to make representations if they so wish. I am inclined to think that this could best be done in the order of detention itself and not by any separate or subsequent communication

2. As regards legal advice, we understand that in the U.K. detenus are allowed free access to their legal advisers and we have recently informed Provincial Governments that such interviews must be allowed, in addition to any interviews permissible under the ordinary rules, for the purpose of bona fide consultation regarding any legal case. I do not think myself that this would cover interviews for the purpose of making representations to Government against orders of detention - at any rate I would proceed on the assumption that it does not.

(4) I agree with Mr Wakely that all representations against detention orders passed by subordinate authorities should be addressed to Government, Central or Provincial as the case may be and further that we should secure in some way that subordinate authorities would only be authorized to make Rule 26 in exceptional emergencies. I do not, however, think that subordinate authorities should only be allowed to make orders for a limited period. The general provision for reviews at six monthly intervals and for the submission of representations to Government should provide all the checks necessary on the improper use of the rule by subordinate authorities in emergencies.

2. I would be inclined to agree that the advantage lies in issuing the Bartley Ordinance, including whatever alterations may be settled as a result of this discussion, irrespective of the decision of the Federal Court in the present appeals. If that decision goes against us there will be a need for the immediate promulgation of that Ordinance and I think we should have to incorporate whatever amendments we may regard as necessary without consulting Provincial Governments. The matter, however, would be of sufficient importance to suggest that it should be brought before Council, when, of course, the War Member would have an opportunity of expressing his views. If the Federal Court decision is in our favour, the need for immediate action will not be so great and we might consult Provinces and any other authorities who may be interested.

(R. Tottenham)

25.8.43.

Additional Secretary.

H.M.

Para 1 of Additional Secretary's note. Point (1). I still think that the mode of expression used in para 4 of my previous note would be more convincing and businesslike. But I am very ready to consider any views which Sir George Spence may like to express on the point. It will be remembered that in previous Emergency Powers Ordinances detention without trial was limited to two months. The opportunity of extension of orders will, however, provide for longer detention than six months where the Provincial Government, after full consideration of the case, consider it necessary to use their discretion in this way. It will then practically amount to passing a fresh order which is rather different from merely reviewing a previous order. I agree, however, that if the provision for review was sufficiently stringent it would serve much the same object and I must leave it to Additional Secretary to decide in consultation with Sir George Spence which is the better way of proceeding.

Point (2). No remarks.

Point (3). I agree that persons detained should be informed at once of the grounds of detention. I do not, however, think that this should be done in the detention order which is of a more formal character. Moreover the information of grounds of detention must be accompanied by an intimation that the detained person has the right of making representations. I think, therefore, that a separate communication to this effect should be supplied to the prisoner as soon as possible after his detention. This procedure would have the additional advantage of allowing the grounds un stated in the communication to be more fully considered than might be possible in the circumstances of the moment of detention.

The question of legal advice should not arise here. Legal advice is to be allowed where legal proceedings are in view. But representations which we now contemplate are not for the purpose of any judicial proceedings.

Point (4). All representations should certainly be addressed to Government and I think it most desirable that the power of subordinate authorities to make orders under Rule 26 should be very strictly limited in whatever way seems best. I think that every order passed by a subordinate authority should be confirmed within a stated period by the Provincial government which will thus make itself directly responsible for the propriety of the order. This is a matter which could not properly be left until six months later.

Para 2 of Additional Secretary's note. I am in some doubt whether a separate Ordinance will be necessary if the Federal Court decision goes in our favour. It is generally advisable to modify Rules rather than to issue fresh Ordinances. But I have no strong views on the point. I agree that in any case the matter should be brought before Council with His Excellency's permission. The actual drafts of the proposed amendments of Rule 26 or of the Bartley Ordinance will, of course, have to be ready before that is done.

R.M. Maxwell,
26.8.43
Home Member.

Additional Secretary.

It now seem to be largely a matter of drafting and deciding how much could be put into a revised Rule and how much would require an amendment of the Act. I think this Bartley ordinance is ready and perhaps the best plan would be to incorporate these proposals in the draft of that ordinance in the first instance. We should be prepared for the greater emergency i.e. a possible adverse decision by the Federal Court. The file should go to Sir George

Spence first thing tomorrow morning and if he thinks it desirable and will ring me up before 11 a.m. I will come over at once to discuss and perhaps bring Mr Wakely.

R. Tottenham
26.8.43.

1 Reference to a meeting planned with Mr Ogilvie and Mr Wakely. 2 Doc 74

80: Case of Tapas Kumar Basu Mullick

Govt. of Bengal (Home) File No. W586/43
[Bengal State Archives]

History sheet scrutinised and returned.¹ Detention justified. I do not consider however that there is sufficient ground for continuing detention. I accept the information that he has taken part in active sabotage including the Beadon Street Post Office dacoity and bomb throwing at a liquor shop in Ballygunje and at tram cars in that locality. His actual membership of, and importance in, the R.S.P., however, seems to me to be insufficiently established and there is nothing from which I can deduce that he is an influential and important person who is likely to be able to cause effective and serious disturbance without direction by experienced and influential people. He will be released on 15.9.43 unless D.I.G., I.B., furnishes additional grounds on which his continued detention can be justified.

A.E. Porter
25.8.43

Not printed

81: Access to legal advice for security prisoners — (dt 25.8.43-5.9.43)

File No. 44/32/44 – Home Poll (I)
[NAI]

Notes in the Defence Department

A point that may be raised is whether a detained person should be allowed legal advice in making his objections. I do not know what the practice is in England; but *prima facie* I would say that as a person is detained on grounds of fact or supposed fact, not of law, there is no reason for allowing access to legal advice.

L.J.D. Wakely, 25.8.43.

Notes in the Defence Department

As regards legal advice, we understand that in the U.K. detenus are allowed free access to their legal advisers and we have recently informed Provincial Governments that such interviews must be allowed, in addition to any interviews permissible under the ordinary rules, for the purpose of bona fide consultation regarding any legal case. I do not think myself that this would cover interviews for the purpose obtaining legal advice in making representations to Government against orders of detention — at any rate I would proceed on the assumption that it does not.

R. Tottenham,
5.8.43.

The question of legal advice should not arise here. Legal advice is to be allowed where legal proceedings are in view. But representations which we now contemplate are not for the purpose of any judicial proceedings.

R.M. [Maxwell],
26.8.43.

4. One question of importance which occurs to me and on which, I think, we should obtain the best advice before actually drafting is whether a right to make representations conferred either by Ordinance or by amendment of rule on persons detained would be liable to create a demand for the production of such representations in courts for the purpose of habeas corpus applications. A similar provision in Regulation III of 1818 has not, so far as I am aware, led to any such demand. But cases under this Regulation would be comparatively few. Similarly I have not heard that the corresponding provision in Regulation 18B of the U.K. Defence Regulations has led to any interference from the High Courts in England. But where a concerted attempt is evident to bring the cases of Security prisoners in India before the High Courts and where certain High courts have shown a disposition to lend themselves to these tactics we have to be safeguarded against the possibility that, e.g. representation made by Gandhi or members of the working Committee might be demanded by the Courts for the purpose deciding whether the person in question was properly detained or not. If there is any such danger we must seek means of placing these representations firmly beyond the reach of any Courts in any circumstances.

R.M. [Maxwell],
5.9.43.



82: Case of Hari Sadhan Sen

Govt. of Bengal (Home) File No. W502/43
[Bengal State Archives]

Government of Bengal
Office of the Deputy Inspector General of Police

C.I. Department,
... Group
Intelligence Branch.
No. 25565
435–43 E.B.–N.

From
The Deputy Inspector General of Police, I.B.

To
A.E. Porter, Esq., C.I.E., I.C.S.,
Additional Secretary to the Government of
Bengal, Home Department.

Dated 27th August, 1943.

Sir,
With reference to G.O. No. 10066 Def. dated 19.8.43,¹ I have honour to state that Harisadhan Sen, s/o Sarada of Quepara, Raozan, Chittagong, was sent on transfer to Delhi on 21.8.43.

I have the honour to be,
Sir,
Your most obedient servant.

For Deputy Inspector General of Police, I.B.

¹ Doc. 75. See also Doc. 67 in this connection.

83: Emperor v. Sibnath Banerjee and others¹ Respondents [Spens C.J., Varadachariar and Zafrulla Khan J.J. (31 August 1943)]

AIR, Vol. 30, 1943, Federal Court Calcutta, pp. 75–85
(43 30 A.I.R. 1943 Cal. 377 S.B.)

31st August 1943.

Zafrulla Khan J. (*Varadachariar J. concurring.*) (Case Nos 13 to 21 of 1943).

These appeals have been preferred by the Bengal Government against orders passed by

the Calcutta High Court directing the release of nine persons who were being detained under R.26, Defence of India Rules. The detention orders had been passed on various dates in the years 1940 and 1942. By a judgment given on 22nd April of this year, this court held R.26, Defence of India rules to be ultra vires in that it went beyond the rule-making power conferred on the central Government by the Defence of India Act. Immediately after this judgment was pronounced, the applications, out of which these appeals have arisen, were filed under S.491, Criminal P.C., praying for the release of the detenues concerned on the ground that their detention was illegal. On 28th April, the Governor-General promulgated an Ordinance, 14 of 1943, whereby the rule-making power of the Central Government under the Defence of India Act was made wider so as to cover the terms of R.26 as it had all along stood. The section was so worded as to make this change operative as from the date of the Defence of India Act itself. By another section of the Ordinance it was provided:

"For the removal of doubts it is hereby enacted that no order heretofore made against any person under R.26, Defence of India Rules, shall be deemed to be invalid or shall be called in question on the ground merely that the said rule purported to confer powers in excess of the powers that might at the time the said rule was made be lawfully conferred by a rule made or deemed to have been made under S.2, Defence of India act, 1939."

When the Habeas Corpus applications came on for hearing, reliance was placed upon the Ordinance as an answer to the applications, with the result that the validity of the Ordinance itself was challenged. Other questions were also raised in support of the applications. The various contentions have been summarized by Mitter J., as follows:

(I) That the whole S.2, Defence of India Act, both in its original and amended forms, is ultra vires the Indian Legislature. (II) That the portion of cl. (x) of S.2 (2) of the said Act which has been added by the amendment made by the Ordinance is ultra vires the Indian Legislature and accordingly of the Governor-General's powers under S.72 of Sch.9. the corresponding portions of R.26, Defence of India Rules, are bad and consequently the orders of detention in the cases we have before us are bad. (III) That the Governor-General has no power to repeal or amend directly any Act of the Federal Legislature by an Ordinance made and promulgated under S.72 of Sch. 9, Government of India Act, 1935. (IV) That it is only the Central Indian Legislature that has the power to repeal or amend an Act of the Central Indian Legislature passed under the provisions of S.102, Government of India Act. (V) That the Governor-General has no power to legislate by such an Ordinance on any subject enumerated in List II of Sch.7, Government of India Act. (VI) That in any event the Governor-General has no power to give retrospective operation to such an Ordinance. (VII) That in any event the Ordinance (14 of 1943) cannot affect proceedings which were pending at the date of its promulgation. (VIII) That S 3 of the Ordinance (14 of 1943) has no independent existence apart from S.2 of the said Ordinance and must stand or fall with that section. (IX) That R.26, Defence of India Rules, had no existence in the eye of law on 29th September 1939, when the Defence of India Act was passed and so does not exist even now either in its original or amended forms. (X) That even if R.26 be not ultra vires the detention of the nine persons whose cases are before us was improper.

On questions I, II, IV, V, VI and VII, the three learned Judges who constituted the Bench unanimously rejected the contentions urged on behalf of the detenues. In respect of questions III, VIII and X, two of the learned Judges (Mitter and Sen J.J.) upheld the contentions urged on behalf of the detenues, while Khundkar J. took a different view. On question IX, Mitter and Khundkar J.J. agreed, but Sen J. disagreed. In the result Mitter and Sen J.J. directed the

release of the detenus. Hence these appeals. As a matter of convenience, we heard along with these appeals three other groups of appeals against orders passed by the High Courts of Madras, Allahabad and Lahore on similar applications under S.491. In those cases, the High courts dismissed the applications and the appeals were preferred by or on behalf of the detenus. It will be convenient to deal with the Bengal appeals in the first instance. During the pendency of the appeals one of the detenus, Sasanka Sekhar Sanyal, the respondent in case No. 21 has been released and it is therefore not necessary to deal with that case.

The Advocate-General of Bengal and the Advocates-General of the various Provinces addressed full arguments to us questioning the correctness of the reasoning and the conclusions of Mitter and Sen J.J. on questions III, VIII and X. On behalf of the detenus, these findings were supported, and their counsel also took exception to the reasoning and conclusion of Mitter and Khundkar J.J., in respect of question IX and to the unanimous conclusion of the three learned Judges on questions I and II. In discussing question VI, the learned Judges of the High Court do not seem to have attached any importance to the difference between the provision in S.2 of the Ordinance which makes the substituted provision take effect as from the date of the Defence of India Act itself and the provision in S.3 which prevents any question being raised as to the validity of orders theretofore passed under Rule 26. This distinction was stressed in the course of the argument here.

The third question has been framed in general terms, without reference to the particular enactment (the Defence of India act) with which the Ordinance was dealing and without reference to the terms of the Ordinance itself. It draws no distinction between an attempt made by an Ordinance to amend or repeal a permanent enactment of the Legislature and an attempt to amend or repeal an act of limited duration, like the Defence of India Act. Again, it draws no distinction between cases where the Ordinance merely enacts a law to come into operation from the date of the Ordinance and where it attempts to declare that even before the date of its enactment the law must be deemed to have been different from what the pre-existing statute had enacted. The same remark may be made as to the possibility of an Ordinance declaring that even after the expiry of the period of the Ordinance the law shall remain what it had been declared to be by the Ordinance, and not what it would be according to pre-existing legislation. The question seems to assume that all these cases will stand on the same footing and admit of one general and comprehensive answer whether in the affirmative or in the negative. It also assumes that all conceivable forms of amendment will be governed by one and the same rule and that the power to repeal will stand on the same footing as the power to amend. The discussion has shown that the question might not admit of a general or comprehensive answer and that different aspects might be governed by different considerations.

On behalf of the Crown, it was broadly maintained both here and before the High Court that whatever a Legislature in India can do by way of amending, modifying or repealing one of its own enactments can as well be done by an Ordinance in relation to any enactment of that Legislature. Sections 108 and 110, Constitution Act, were relied on as negating the existence of a general principle that one Legislature cannot, in the absence of power expressly conferred, amend, modify or repeal enactments passed by another Legislature. Counsel for the Punjab detenus argued by way of answer to this contention, that in 1861 (when S.72 of the present Sch.9, Constitution Act, was first enacted), and indeed up to 1919, Parliament had proceeded on the assumption that unless expressly authorized so to do, a Legislature in India would not have power to amend, repeal or modify even its own enactments. He also maintained that the concluding words of S.72 providing that an act of the Legislature might 'control or

supersede' an Ordinance indicated that the two legislating authorities were not co-ordinate but that the Legislature was the paramount authority.

On behalf of the detenus, it appears to have been contended before the High Court that the Legislature and the Ordinance-making authority being two distinct legal entities, though operating in the same field (as to subject-matter and as regard local extent), each can legislate only by itself and cannot directly amend or repeal any measure passed by the other, unless clearly empowered to do so. This contention was repeated before us. It was not disputed except by counsel for the Punjab detenus that an Ordinance may in effect modify the operation of statute by enacting something repugnant to the provisions of the latter. When certain instances were put to counsel, the difficulty of maintaining this extreme position became evident. Take for instance the Ordinance that was considered by the Court in 37 C.W.N. 104, it added two offences to the list of offences specified in S.4, Press (Emergency Powers) Act, 1931, and it was in terms stated in the Ordinance itself that such should be the law only during the time that the Ordinance was in force. There was no other interference with the existing legislative enactment. Such an addition can, in one sense, be described as an 'amendment' of the Act. If the Ordinance-making authority can create new offences and make them triable and punishable in a manner provided for in a pre-existing enactment, there can be no purpose in insisting that the Ordinance must be self-contained and must reproduce all the provisions of the pre-existing Act. It was rightly maintained by counsel for the Crown that the validity or invalidity of an Ordinance should not be made depend upon mere drafting devices or on the draftsman's ingenuity. Take again a case like, 12 Lah. 26: the Ordinance there in question denied to the accused the benefit of certain provisions of the Criminal Procedure Code, such as those relating to trial by jury or with the aid of assessors, appeal to the High Court, etc. It could not be said that it was beyond the power of the Ordinance-making authority to exclude certain of the provisions of the Criminal Procedure Code in certain specified classes of cases; indeed, S.1 (2) of the Code recognizes this possibility. Here again, it will be difficult to maintain that this result can be achieved only by a self-contained Ordinance and not by one which purports to modify or exclude certain provisions of the pre-existing law.

Alternatively, the rule was formulated in a different form before us by counsel for some of the detenus, viz., that the Ordinance-making authority could declare its own intention as to what the law should be during the period that the Ordinance was to be in force, but it could not adopt a course which would attribute to the Legislature an intention different from what it had declared in its own enactment. One or two illustrations may help to elucidate this test or principle. Section 108, Constitution Act, assumes that a Legislature in India may repeal or amend an Act of Parliament extending to British India. When this power is exercised by an Indian Legislature, it cannot be made to appear that Parliament has passed an enactment different from what in fact it had; what the Indian Legislature can do is to declare that within the local area of its legislative authority, the law shall be as enacted by itself and not as enacted by Parliament. The same will be the case when the Indian Legislature purports to repeal an Act passed by Parliament [cf. also Ss.92 (2) and 95 (3), Constitution Act]. In such cases, neither the terms nor the operation of the Parliamentary enactment would be affected in areas over which the Indian Legislature had no control. The position thus stated is clear enough, because the 'local extent' of the legislative power is clearly different in the two cases. Will not the governing principle be the same, where the capacity of the two legislative authorities even though co-extensive as regards local extent and subject-matter, differs in respect of the time limit during which their respective enactments can operate?

The Legislature can at any time enact a measure and such measure can remain in force without any limit of time; but the exercise of the Ordinance-making power is limited in two ways, (i) by the limitation as to the circumstances in which it can be exercised and (ii) by the limitation as to the time during which any measure so enacted can remain in operation. The existence of an emergency is a condition precedent to the exercise of the power. The fact that the Court cannot go behind a declaration of emergency made by the Ordinance-making authority cannot affect this question. The power was intended to be availed of and could be availed of only in an emergency, whereas ordinary legislation is not governed by any such limitation. Similarly, an Ordinance is necessarily of limited duration, whether under S.72 or under the terms of the India and Burma (Emergency Provisions) Act of 1940. If an Ordinance purported to declare that during a period anterior to the emergency or even after the termination of the period of the Ordinance, a provision of statute law was or would be different from what the Legislature had enacted, would it be any better than an attempt by the Indian Legislature to affect the operation of an Act of Parliament outside the local limits of the jurisdiction of that Legislature?

An attempt to repeal a pre-existing statute may furnish another useful illustration. That an Ordinance can for the period of its duration suspend the operation of the whole or any portion of a pre-existing statute, appears to us to admit of no doubt. In such a case, the pre-existing law would come into operation again on the expiry of the period of the Ordinance. But suppose the Ordinance purported to repeal a pre-existing statute or part thereof. One of the counsel for the Crown thought that the pre-existing law would in that case also be revived on the expiry of the term of the Ordinance; but another contended that this would be a matter of construction and that if there was nothing in the language of the Ordinance to suggest that the repeal was intended to be temporary, the pre-existing law might not be revived merely by reason of the expiry of the period of the Ordinance. In support of this contention, he drew our attention to the discussion in *Crazies' Statute Law* (Edn. 4, pp. 357 et seq.). This will no doubt be the position when Parliament, which is competent to pass either a temporary law or a permanent law, chooses to pass a temporary measure, and by such measure repeals a pre-existing law. Can the position be the same when an authority which can pass only a temporary law purports to repeal a pre-existing permanent statute? The impugned Ordinance enacts for cl. (x) of sub-section (2) of S.2, Defence of India Act, 1939, the following clause shall be substituted, and shall be deemed always to have been substituted. . . .

Leaving out of consideration for the moment the fact that the Defence of India Act itself is in terms a temporary measure, suppose an Ordinance attempted to make a similar provision in respect of a section in a statute of permanent operation. What would be the position on the expiry of the period of the Ordinance? If the pre-existing statutory provision could be deemed always to have been what the Ordinance substituted for it, it might be a difficult question to decide whether the provision in the originally statutory form would be revived at all.

It will be noticed that unlike an amendment merely in the nature of an addition to a pre-existing statute, S.2 of Ordinance XIV attributes to the Legislature a provision very different from what it in fact had enacted. In justification of the adoption of this course by the Ordinance-making authority, it was claimed on behalf of the Crown that any legislative authority with 'plenary powers' could enact a law with retrospective operation. It seems to us misleading to assume that the Ordinance-making authority enjoys plenary powers of Legislation and then seek to deduce therefrom the inference that it must have the power to enact a provision with

retrospective operation. As regards 'subject-matter' its powers may be co-extensive with those of the ordinary Legislature but, as already pointed out, there are at least two limitations upon its powers. It is necessary to refer to a certain ambiguity in the use of the expression 'retrospective operation'. It was observed by Buckley L.J. in (1911) 2 Ch. 1 at pp. 11 and 12:

Retrospective operation is one matter. Interference with existing rights is another. If an Act provides that as at a past date the law shall be taken to have been what it was not, that I understand to be retrospective. . . . The question here is as to the ambit and scope of the Act and not as to the date as from which the new law is to be taken to have been the law.

An enactment which declares that even in the past the law must be taken to have been different from what in fact it was has sometimes been spoken of as 'retroactive'. Assuming that the ordinary Legislature can pass a 'retroactive law' in the sense above explained (see (1870) 6 Q.B. 1 (1915) 20 Com. L.R. 425 and (1942) 66 Com. L.R. 1) it would not necessarily follow that the Ordinance-making authority must also have the power to pass a retroactive law. It has no doubt been held that in an emergency, it would be for the Governor-General to decide what law was required to meet the emergency; but the enactment of a retroactive law may in one view be said to raise a question of 'jurisdiction' or 'power' and not merely a question of aptness or expediency. The power to enact provisions interfering with pre-existing rights and the remedies therefore – though these are also sometimes spoken of as 'retrospective' – stands on a different footing, because such provision will declare the law only for the period during which the Ordinance is in force and not for an anterior or a subsequent period, though their effect may be to deprive parties of rights accrued at an anterior date and of remedies in respect of such rights. In (1932) A.C. 260 at p. 267 Lord Darling observed:

It may be true that 'not Jove himself upon the past hath power' but Legislators have certainly the right to prevent, alter or reverse the consequences of their own decrees.

There was no complication in that case of one legislative authority attempting to modify or nullify the operation of a law enacted by another authority, but the observation brings out the difference between changing the law for the past and modifying or taking away its consequences. These authorities may justify a finding in favour of the Crown as regards the validity and operation of S.3 of the Ordinance, but they do not compel a like answer as regards the power of the Ordinance-making authority to enact a retroactive law.

There was lengthy discussion before us as to the bearing and effect of the decision in (1896) A.C. 348 particularly of the observations on pp. 366 and 367. It was contended for the detenus that two propositions had been laid down here, (i) a broad statement (on p. 366) to the effect that 'the repeal of a Provincial Act by the Parliament of Canada can only be effected by repugnancy between its provisions and the enactments of the Dominion' as the Dominion Parliament 'has no authority conferred upon it by the Act to repeal directly any provincial statute', and (ii) a narrower statement (on p. 367) to the effect that the Parliament of Canada would have no power to pass a prohibitory law for the Province of Ontario and could therefore have no authority to repeal in express terms an Act which is limited in its operation to that Province'. On behalf of the Crown, it was maintained that the second or narrower proposition was all that was laid down by their Lordships in the case and the observations on p. 366 implied nothing more when read with the context. The controversy would seem to turn on the significance of the words 'whether it does or does not come within the limits of jurisdiction prescribed by S.92' occurring on p. 366.

As the general question framed by the Calcutta High Court cannot be satisfactorily answered without further discussion of the above and other similar aspects of the problem, we refrain from expressing any final opinion upon it, as no such decision is necessary for the disposal of these cases. The view that we take as to S.3 of the Ordinance makes it unnecessary for us to pronounce any decision in respect of S.2.

Proceeding next to question VIII, it seems to us that in spite of the language of the preamble, S.3 of the Ordinance cannot be said directly to amend or repeal any provision of the Defence of India Act, nor, as we read it, is it so dependent upon S.2, or so connected with it as to be incapable of being given effect to by itself, i.e., irrespective of whether S.2 is valid or not. The 'doubts' referred to in the opening words of S.3 may well include doubts as to the validity of S.2. Section 3 merely deals with the remedies of parties and the power of the Court to give redress in respect of a breach of the pre-existing law and might well have been enacted either by the Legislature or by the Ordinance-making authority without any provision corresponding to S.2 of the Ordinance. The operativeness of such a provision is of course subject to the limitation referred to by Willes J. in (1870) 6 Q.B. 1 at p. 17, that the authority which enacts it must be one which 'could have authorized by antecedent legislation the acts done', otherwise, by the device of precluding an investigation by the Court, a legislative authority would be able to do indirectly what it could not do directly, see (1940) A.C. 513 at pp. 533 and 534. We express no opinion on the question what the effect of this provision would be if, after the expiry of the Ordinance, any question should be raised as to the validity of orders of detention passed prior to the enactment of the Ordinance.

It was contended that even if S.3 should be held to be valid and independently operative, it would not avail the Crown much, because that section proceeded on the assumption that at the time the orders of detention were passed, Rule 26, Defence of India Rules, was at least defacto in existence, whereas according to counsel for the detenus, this was not the case. This was question IX before the High Court. Section 3 of the Ordinance has to be read in the light of S.21, Defence of India Act. Counsel maintained that an ultra vires rule was as good as non-existent, and that R. 26 (which had been originally framed under the Defence of India Ordinance) could not therefore be held to have been continued by S.21, Defence of India Act. This ignores the fact that S.21 only requires the rule to have been 'made' – not validly made under the earlier Ordinance. The object of S.21 was only to avoid a break in the operation of the rules and to obviate the necessity of promulgating them afresh under the new enactment. It had no reference to the validity or validation of the rules. The case is not analogous to that contemplated by S.16 which gives 'finality' to certain orders. Such a provision was held by this Court in *Keshav Talpade's case* to be applicable only to orders which could not be nullities as having been passed under an ultra vires rule.

As regards questions I and II, the argument before us was limited to the ground that 'public safety or interest' was not one of the heads specified in entry No. 1 of list I or entry No. 1 of List II of Sch.7, Constitution Act, as subjects in respect of which Indian Legislation might provide for 'preventive detention'. The judgment of this Court in *Talpade's case* clearly proceeded on the footing that such legislation was covered by the two entries. We think that the expressions 'reasons of state connected with defence' and 'reasons connected with the maintenance of public order' are wide enough to include public safety or interest.

Counsel for the Punjab detenus challenged the validity of the whole Ordinance on another ground. He recognized that the question of emergency was one for the Governor-General and not for the Court to decide. But he said that when the nature of the emergency had been

stated by the Governor-General or even by counsel for the Crown, it would be open to the Court to consider whether it would not be an abuse of or a fraud on the power to treat the facts disclosed as a pretext for the exercise of the emergency power. If it would be an abuse of or fraud on the power, he contended that the case must be treated as one of absence of power. This argument was urged on the basis of an answer given by the Advocate-General of India (in the course of the argument before us) and of a statement said to have been made by counsel for the Crown before the High Court at Lahore, to the effect that it was the decision of this Court in Talpade's case that necessitated the promulgation of the Ordinance. Counsel contended that it would be preposterous to treat a decision of this Court as an 'emergency' justifying the exercise by the Governor-General of his extra-ordinary power of promulgating Ordinances. It does not seem to us necessary to deal with the larger issues involved in this contention. Such an argument would be available only if it could be suggested that the power had been exercised for a corrupt purpose or for purposes foreign to the power. (See Farwell on powers, ch. X.) Can that be said to be the case here? The decision of this Court might have led to promulgation of the Ordinance. But the 'Emergency' was the apprehended danger to peace and public safety, likely to arise from the release of thousands of detenus in obedience to the decision of this Court. It is not within the province of the Court to examine the justification for the apprehension or assess the extent of the possible danger.

We now turn to question X. We may point out in passing that the assumption to be made is not that R.26 is ultra vires but only that its validity has been put beyond question by S.3 of the Ordinance. On this footing the validity of the orders of detention in these cases was questioned on the ground that they had not been made in accordance with the provisions of the rule. The relevant portion of Rule 26 runs as follows:

The Central Government or the Provincial Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war it is necessary so to do, may make an order: (a) . . . (b) directing that he be detained.

It was urged on behalf of the Crown that the Orders being on their face regular and in conformity with the language of the rule, it was not open to the Court to investigate their validity any further. It was also urged that the orders had in fact been made in conformity with the provisions of the rule. Section 59 (2), Constitution Act, was sought to be called in aid in support of the proposition that the validity of the orders must be presumed by the Court and could not be questioned. All that that sub-section secures is that the validity of an order or instrument made or executed in the name of the Governor and authenticated in such manner as may be specified in rules made by the Governor, shall not be called in question on the ground that it is not an order or instrument made or executed by the Governor; that is to say, in the case of an order or instrument purporting to be made or executed by the Governor and duly authenticated, it must be presumed that it was made or executed by the Governor. No question as to who made these orders was raised by the respondents. What was questioned was the correctness of the recital in the orders that the Governor had been satisfied that with a view to preventing these persons from acting in a certain manner, certain action was necessary. It was conceded that the Court could not be invited to investigate the sufficiency of the material or the reasonableness of the grounds upon which the Governor had been satisfied. The gist of the contention was that these cases were never before the

Governor, that the Governor had never applied his mind to them, and that therefore it could not be said that the Governor had been satisfied.

To meet this contention, reliance was placed by the Crown on the presumption that official acts have been regularly performed. The words 'may presume' in S.114, Evidence Act, leave it to the court to make or not to make the presumption, according to the circumstances of the case; and the presumption when made is rebuttable. Reference was made in this connection to 1942 A.C. 206 and (1942) A.C. 284. The question in those cases was whether the Home Secretary had reasonable cause to believe that certain persons were of hostile associations and that by reason thereof it was necessary to exercise control over them. It was held that the matter was one for the executive discretion of the Secretary of State, and that the Court was not entitled to investigate the grounds on which the Secretary of State came to believe the persons concerned to be of hostile associations, or to believe that by reason of such associations it was necessary to exercise control over them. There is no suggestion anywhere in the speeches of their Lordships in those two cases that if the statement that the Secretary of State believed those persons to be of hostile associations had itself been challenged, it would not have been open to the Court to look into that question. If the ground of challenge against the orders there sought to be impugned had been that the cases had never been placed before the Secretary of State at all, so that he never had any opportunity of exercising his mind with respect to them, we have not the slightest doubt that this would have been held to be a proper ground of challenge in a Court of law. At page 224 (1942 A.C.) Viscount Maugham observed:

In my opinion, the well known presumption *omnia esse rite acta* applies to this order, and accordingly, assuming the order to be proved or admitted, it must be taken *prima facie*, that is until the contrary is proved, to have been properly made and that the requisite as to the belief of the Secretary of State was complied with.

In 1942 A.C. 284 at p. 295 he quoted with approval the following passage from the judgment of Goddard L.J. in the Court of Appeal:

I am of opinion that where on the return an order or warrant which is valid on its face is produced it is for the prisoner to prove the facts necessary to controvert it, and in the present case this has not been done. I do not say that in no case is it necessary for the Secretary of State to file an affidavit. It must depend on the ground on which the return is controverted, but where all that the prisoner says in effect is 'I do not know why I am interned. I deny that I have done anything wrong', that does not require an answer because it in no way shows that the Secretary of State had not reasonable cause to believe, or did not believe, otherwise.

In 1942 A.C. 206, Lord Wright observed at page 262:

Mackinnon L.J. who agreed with his brethren said that power of the Home Secretary to issue a valid order depended on the fulfilment of a condition, the existence of a state of mind in the Home Secretary, that is that he had reasonable grounds for believing certain facts to exist, and by implication that he honestly entertained that belief. Goddard L.J. I think, also treated the material issue as being what is the Home Secretary's state of mind.

In 1942 A.C. 284, Lord Romer observed (page 309):

In the present case, it is plain that Sir John Anderson was of opinion that there was reasonable cause for his belief, and that he did honestly believe that the appellant was a person of hostile associations and that by reason thereof it was necessary to exercise control over him. It necessarily follows that far as the appellant relies on the absence of proof that there was in fact reasonable cause for such belief the appeal must fail.

The whole question in those two cases was whether under the regulation in question, it was incumbent upon the Secretary of State to prove that the cause which led him to believe that the person against whom action was taken in each case was of hostile associations and that by reason thereof it was necessary to exercise control over him, would, in the opinion of the Court, amount to reasonable cause. Their Lordships held that the question whether there was or was not reasonable cause was one for the Secretary of State and not for the Court. It was not disputed that before action could be taken under the regulation, the Secretary of State must believe that the person concerned was of hostile associations and that by reason thereof, it was necessary to exercise control over him. We may observe that the head note in 1942 A.C. 284 reads as though the production of an order regular in form would have been conclusive but their Lordships' speeches in the two cases leave no room for doubt that the presumption attaching to an order regular on the face of it is only a rebuttable presumption.

This brings us to the question, which is the authority that must be satisfied before an order under R.26 can be made? On the language of the rule, so far as the cases before us are concerned, it must be the 'Provincial Government'. This, according to the Crown, means the Governor or officers subordinate to him (S.49 (1), Constitution Act), or the authority or officers to whom this function may have been allotted by rules of business framed in accordance with S.59 (3) of the Act. The argument was that inasmuch as action to be taken under R.26 was in the nature of the exercise of executive discretion, it fell within the executive authority of the Province within the meaning of S.49. On its being pointed out that this would lead to the result that any officer subordinate to the Governor, even one of the lowest grade, could, as a matter of course, exercise the very drastic powers conferred by the Defence of India Rules, which could not reasonably be presumed to have been intended by the Legislature, it was urged that the matter would be regulated by rules of business framed under S.59 (3). We are unable to accede to this contention. The executive action or authority dealt with in Ss.49 and 59 must relate to matters with respect to which the Legislature of the Province has power to make laws (S.49 (2)). Section 124 (2) makes provision for Federal legislation conferring powers and imposing duties upon a Province or officers and authorities thereof relating to matters with respect to which a Provincial Legislature has no power to make laws. We are of the opinion that whenever powers of this kind or indeed other special statutory powers are conferred, they, must to the extent to which specific provision has been made in the statute conferring the powers be exercised by the authority and in the manner specified in the statute and in strict conformity with the provisions thereof.

In this view of the matter, it is unnecessary to make any reference to rules of business on which reliance was placed on behalf of the Crown. We may, however, observe in passing that the only rule on which reliance was placed in this connection (R.16) makes no reference to the exercise of the power of detention under the Defence of India Rules. It merely authorizes the making of Standing Orders by Ministers with reference to their normal duties. No Standing Order framed in pursuance of the rule was placed before us. Nor have we been able to discover any other rule in the rules of business supplied to us on behalf of the Bengal Government which covers this matter. Rule 26, Defence of India Rules, confers the power of detention on the 'Provincial Government'. Rule 3 (1) provides that the General Clauses Act, 1897, shall apply to the interpretation of the rules. For the definition of 'Provincial Government' for the purpose of the rules, recourse must, therefore, be had to the General Clauses Act. Sub-section, (43a) of S.3 of that Act defines 'Provincial Government' in a Governor's Province as:

The Governor acting or not acting in his discretion, and exercising or not exercising his individual judgment according to the provision in that behalf made by and under the Government of India Act; in other words, it means the Governor acting in his discretion (in which case his Ministers are not entitled even to tender their advice to him), or the Governor exercising his individual judgment (in which case he must give his Ministers the opportunity of tendering advice but is under no obligation to accept that advice), or the Governor acting on the advice his Ministers. In each case, it must be the Governor who acts, whether without the advice of his Ministers or after such advice has been tendered, and in the latter case, whether in accordance with such advice or differing from such advice. It was pointed out to us that the definitions in the General Clauses Act are applicable only in the absence of anything repugnant in the subject or context, and our attention was drawn to a number of Defence of India Rules with regard to which it was contended that the expression 'Provincial Government' could not possibly mean the Governor, whether acting on advice or contrary to advice or without advice. Assuming that the context of some of the rules indicates that the expression 'Provincial Government' must in those rules be given a meaning or significance different from the definition of that expression as set out in sub-section (43a) of S.3, General Clauses Act, that consideration cannot be permitted to govern the interpretation of that expression in Rule 26, which deals with matters of the gravest import and confers power that involve the exercise of the highest responsibility. There is nothing in the language of the rule itself which would constrain us to hold that 'Provincial Government' in that rule means anything other than what it would mean under the definition in the General clauses Act.

It was then urged that the volume and multifariousness of the duties imposed upon the Provincial Government by the Defence of India Rules must necessitate the delegation in many cases by the Provincial Government of its powers to officers subordinate to it and that it must be presumed that this delegation could be effected under its rules of business. Sub-section (5) of S.2, Defence of India Act, furnishes a complete answer to this line of argument. That sub-section expressly authorizes the Provincial Government to delegate the exercise of powers conferred and the discharge of duties imposed by the Defence of India Rules upon the Provincial Government; and we are of the opinion that any such delegation must be made in accordance with the provisions of that sub-section. We were asked to confine the operation of this sub-section to cases of delegation to district officers and to hold that cases of delegation within the Provincial Secretariat were governed by the provisions of S.49 (1) read with S.59 (1), Constitution Act. We are unable so to restrict the operation of S.2 (5), Defence of India Act, both for the reason that there is no warrant in the language of that section for importing any such restriction into its operation, and for the reason that the language of S.49 (1), Constitution Act, makes no distinction between secretariat officers and district officers.

The question whether any delegation that the Provincial Government might desire to make of its powers and duties, under the Defence of India Rules must be made in conformity with the provisions of S.2 (5), Defence of India Act, or may be deemed to be covered by rules of business and Standing Orders framed under S.59 (3), Constitution Act, is not a mere matter of form. The Defence of India Rules confer extremely wide and drastic powers, and it may reasonably be expected that where a delegation of any of these powers is made under S.2 (5) of the Act, care would be taken to ensure that the officers and authorities to whom the delegation is made are selected with due regard to the nature and scope of the powers delegated. This would not be the case under rules of business and Standing orders which were presumably framed without any reference to powers the exercise of which might be

necessitated by an emergency like the one with which the country is at present faced. Again, it may be a question whether a power conferred for instance on a Minister by delegation under S.2 (5), Defence of India Act, could be validly sub-delegated by him by standing orders.

We may observe in dealing with this part of the case that Khundkar J. says in his judgment that R.26 is a rule under para (10) of sub-section (2) of S.2 (of the Defence of India Act) and the Federal Court has so held, and that it is not a rule under sub-section (1) of S.2. He then goes on to observe that S.2 (5) Defence of India Act, cannot be availed of in the case of R.26 because it contemplates delegation of powers and duties conferred and imposed by rules framed under sub-section (1) of S.2 and not under sub-section (2) of S.2. These observations of the learned Judge are with due respect based upon a misreading of the judgment of this Court in *Keshav Talpade's case*.¹ It would not be correct to say that S.2, Defence of India Act, confers two kinds of rule-making powers, one under sub-section (1) and the other under sub-section (2). The rule making power is conferred under sub-section (1) and all that sub-section (2) does is to set out the conditions under which rules in respect of the particular subject-matters enumerated in its paragraphs may be made in the exercise of power conferred under sub-section (1). Any other view would lead to the anomaly that on the subjects enumerated in the paragraphs of sub-section (2) there might be two sets of rules one conferring unconditional and unlimited powers by virtue of being framed under sub-section (1) and the other being subject to restrictions and limitations in conformity with conditions and restrictions prescribed by sub-section (2), a state of affairs, the contemplation of which, could not possibly be attributed to the Legislature. The result is that in our opinion, in the absence of a delegation made under S.2 (5), Defence of India Act, the authority to be satisfied under R.26 must be the Governor. The Advocate-General of Bengal stated that so far as those cases were concerned Government did not rely on any delegation under S.2 (5) of the Act.

It was next contended on behalf of the Crown that the subject of preventive detention was one falling within the field of ministerial responsibility and that cases of preventive detention must be held to have been determined by the Governor on the advice of the appropriate Minister. Assuming for a moment that was so, even then the action must be the action of the Governor. In such case, the Governor would be satisfied with regard to the matters specified in R.26 on the advice of his Minister. It would not be for the Court on a challenge raised to that effect to inquire into the reasonableness or otherwise of the Minister's advice, nor, into the question what advice the Minister tendered or indeed whether he tendered any advice at all. The question as to which of the Governor's various capacities or spheres of activity was attracted in these cases is really not relevant to the purpose in hand. The rule requires that before making an order of detention the Governor should be satisfied on certain matters. Whether he is satisfied on advice tendered to him, or on a personal consideration of the material submitted to him, is so far as the Courts are concerned, immaterial.

We have, however, great difficulty in accepting the proposition urged before us that the subject of preventive detention in cases like the present must be held as a matter of law to fall within the field of ministerial responsibility. That in respect of certain matters the Governor must act in his discretion and that in respect of certain other matters he must exercise his individual judgment is specifically provided by the Constitution Act. There is no matter with regard to which the Constitution Act lays down that it must necessarily be determined by the Governor according to the advice of his Ministers. The field of ministerial responsibility is not defined in any positive manner in the Act, but is adumbrated in a residuary sort of manner, that is to say, it comprises matters with respect to which the Governor is not required to act

in his discretion and does not choose to exercise his individual judgment. The question whether any matter falls within one or other of the special responsibilities of the Governor is left to be determined by the Governor himself. Once he declares that in his opinion a certain matter falls within the scope of any one or more of his special responsibilities, no Court of law has any say with respect to it. Section 50 (8), Constitution Act, lays down that if any question arises whether any matter is or is not a matter as respects which the Governor is by or under the Act required to act in his discretion or to exercise his individual judgment, the decision of the Governor in his discretion shall be final, and the validity of anything done by the Governor shall not be called in question on the ground that he ought or ought not to have acted in his discretion, or ought or ought not to have exercised his individual judgment. Nor can argument be founded upon any obligation or duty that may be laid upon the Governor by his instrument of instructions, inasmuch as the validity of anything done by the Governor cannot be called in question on the ground that it was done otherwise than in accordance with any instrument of instructions issued to him [S.53 (92)].

The field of ministerial responsibility therefore would, with respect to any particular matter, be as wide or as narrow as the Governor might choose to make it, and of no matter can it be predicated as a proposition of law that its determination much depend upon the advice of a Minister as it necessarily falls within the field of ministerial responsibility, inasmuch as the Governor might at any time, with respect to any matter, decide that having regard to the circumstances of the case it falls within the scope of one or more of his special responsibilities. The question, if it properly arises at all in any particular case, must be determined as a question of fact and practice. In the cases before us, it appears to have been assumed on all hands before the High Court that the subject was one of the special responsibilities of the Governor to be determined by him in the exercise of the individual judgment. This was not challenged in the grounds of appeal filed in this Court, though counsel for the Bengal Government decided to urge before us that the matter fell within the field of ministerial responsibility. The material on record does not bear out his contention. There are indications in the affidavit of Mr Porter (Additional Home Secretary to the Bengal Government) that the action taken in some of these cases was not in accordance with the advice of the Minister. This shows that this subject has been treated in the Province of Bengal as falling within the special responsibility of the Governor. In the answers given by the Home Minister with reference to these cases on the floor of the Bengal Legislative Assembly on behalf of the Government, it is specifically stated that these matters were treated as the special responsibility of the Governor. It must also be remembered that though cases of only nine persons have come up before us, the powers conferred by R.26 have in the Province of Bengal been exercised in respect of thousands of His Majesty's subjects and it would be difficult to hold that the matter did not fall within the special responsibility of the Governor as set out in para (a) of sub-section (1) of section 52, Constitution Act.

Towards the close of the argument, it was contended on behalf of the Bengal Government that what actually happened in respect of cases of detention in the Province of Bengal was that if the Home Minister agreed that the order of arrest under R.129, Defence of India Rules, should be converted into an order of detention under R.26, the matter was treated as falling within the field of ministerial responsibility; but if the Minister disagreed, the matter became one for the special responsibility of the Governor. In other words, it was suggested that the question whether a particular matter did or did not fall within the scope of the special responsibilities of the Governor was settled not with reference to the nature of the particular

matter but upon the nature and effect of the advice that the Minister concerned had tendered in respect of it. If the Governor found himself in agreement with such advice, he was content to treat the matter as one of ministerial responsibility; if he disagreed with it, he made it a matter of his special responsibility. In support of this suggestion our attention was invited to the following statement of the Home Minister in the Bengal Assembly:

Ordinarily when a man is arrested under R.129, the case must come up to me at some stage. Now if I agree that the order under R.129 should be converted into one under S. (sic) 26, no difficulty arises. But in some cases I am of opinion the detention is not justified and in those cases it becomes Governor's responsibility.

We are unable to read this statement as meaning that the question became the Governor's responsibility only when the Minister was of the opinion that the detention was not justified. The Home Minister had already stated earlier:

As regards members of the Legislature, we have laid it down that they should as a matter of course be brought to the notice of the Government before they are detained under R.26. In some cases the order of arrest under S. (sic) 129 has been converted into detention under R.26 under my orders. In some cases I have not approved but as is well-known the matter is one which is the Governor's special responsibility.

In the light of this statement, the later statement made by the Minister, which is relied upon by counsel and has been set out above, could only mean that the subject of detention was treated by the Governor as a matter of his special responsibility. When the Governor found that the Minister's advice was in favour of detention, he accepted that advice but when he found that the Minister's advice was against detention, he overruled the Minister as he was entitled to do in the exercise of his individual judgment. These statements taken together cannot mean that the question became the Governor's responsibility only when and because he disagreed with the advice tendered by the Minister. In any case we would be reluctant to attribute such an attitude to the Governor.

It now becomes necessary to examine the material on record for the purpose of determining whether the requirements of R.26 have been complied with in respect of the orders of detention that have been relied upon by the Crown as an answer to the applications for the issue of writs of Habeas Corpus in these cases. We have already made reference to the contention that the presumption set out in illustration (c) to S.114, Evidence Act, viz., that official acts have been regularly performed attaches to these orders. Before any such presumption can arise, it must be shown that the orders are on the face of them regular and conform to the provisions of the rule under which they purport to have been made. We have set out earlier the relevant portion of the orders of detention which is the same in each case. This reads as if all that the authority making the order was satisfied about was that the person concerned in each case should be detained and was not certain as to the reason for detaining him, i.e., whether that person was to be prevented from acting prejudicially to the defence of British India, or acting prejudicially to the public safety, or acting prejudicially to the maintenance of the public order, or acting prejudicially to the efficient prosecution of the war. We were told that the order is a cyclostyled form in which the name and particulars of the person to be detained are filled in as need arises. It is possible that the ministerial officer responsible for the drawing up of the order merely copied into this part the relevant portion of the language of the rule itself, and failed to notice that though the word 'or' before the words 'efficient prosecution of the war' was perfectly in order in the rule, it was out of place in the orders of

detention. It was suggested that some sort of reasonable meaning could still be read into this part of the orders of detention, but we see no reason to adopt a meaning different from that which would *prima facie* attach to the language used.

Assuming, however, that the orders are regular in form and are open to no objection on the face of them, there is so much material on the record showing that the requirements of R 26 were grossly violated in the making of the orders that it would not be safe to make any presumption regarding their validity. This material is contained in the affidavits filed on behalf of the respondents and the counter-affidavit sworn to by Mr Porter, Additional Home Secretary to the Bengal Government. Objection was taken on behalf of the Crown to the admissibility in evidence of the answers given by the Home Minister, Bengal, in the Bengal Legislative Assembly to questions put to him regarding detention under Rule 26. These answers are contained in Annexure A to the affidavit sworn to by Mr Nalinakshya Sanyal. Before the High Court, formal proof of the proceedings of the Legislative Assembly was waived by the Crown. We are unable to sustain the objection raised regarding the admissibility of these answers. It is not disputed that the answers were given by the Home Minister in the Legislative Assembly in his capacity and in the discharge of his duties as such Minister. He was the person to whom the duty of answering questions on the subject had been allocated by the Governor under the rules of business. The answers relate to matters which were put in issue before the High Court. In our opinion they were admissible under sections 17, 18 and 20, Evidence Act.

These answers read with Mr Porter's affidavit disclose a state of affairs in respect of the exercise by the Bengal Government of its powers under R.26, which can only be described as lamentable. The largest number of cases of detention in the Province of Bengal appear to have arisen in connection with the disturbances of August and September of last year. In these cases, the procedure adopted appears to have been that the police sent up lists of persons detained under R.129 together with a recommendation that these persons should be detained under R.26. Thereupon, orders for detention under R 26 were issued forthwith as a matter of routine, and, on receipt of further and detailed material from the police, each case was submitted to the Minister concerned who was then expected to scrutinize such material to see whether there was any reason why the detention should not be continued. If he discovered such reason he presumably made a recommendation for release which was sent up to the Governor, as the matter was one of his special responsibility. In case nothing further was heard from the Minister after submission of the cases to him, nothing was done, and the detention continued. We may draw attention in this connection to the following statements made by the Home Minister in the Bengal Legislative Assembly in answer to questions on the subject:

'We have adopted to device of issuing orders under Defence Rule 26 pending scrutiny of the information submitted to us, because this ensures to those who are under detention the rather more favourable concessions allowed to security prisoners, the absence of which was in some cases made a matter for protest or complaint by or on behalf of those concerned.

All that I can say is this, that cases are put up and as a matter of routine the order under S. (sic) 129 is converted into one under Rule 26, unless there are special reasons why a recommendation should be made for their release.

The arrest is forthwith reported to Government for orders in accordance with the requirements of the law and to meet objections made by or on behalf of prisoners and to give them the benefit of the concessions enjoyed by security prisoners pending the consideration of the case, orders under Defence of India R.26 (1) (b) ordinarily issue at once. Later, the recommendation of the police officer, together with the materials furnished in support of the

recommendation are carefully considered by Government and the orders of detention issued are reviewed and cancelled or confirmed according to the nature of the information against the individual concerned.'

In answer to the question whether he was aware that, as a result of the arrangement under which the police were empowered to arrest anybody and detain him automatically beyond the statutory limits, abuses were taking place, the Minister stated:

'It is possible rather it is probable that these things happen. I do not go so far as to say that these things do not happen, in some cases they may happen.'

He stated further:

'Sir, I refer to the General order under which the cases of the members of the Legislature must invariably be put up before me as privileged persons. As regards other cases, I ask for lists of arrests and if I find that there are certain gentlemen about whom I personally hold this view that it is unlikely that they might be guilty, the General order given is that as quickly as possible the order under R.129 should be converted into an order under R.26 and then all the cases should be brought up before me.'

There was apparently no limit of time within which a 'review' of these cases was to be completed by the Minister. In the case of Nanigopal Mazumdar, for instance, the automatic order of detention under R.26 following upon arrest under R.129 and a recommendation by the police for detention was issued on 8th March 1943. By 24th May 1943 (the date on which Mr Porter's affidavit was sworn) the detailed material upon which the recommendation of the police had been made, had not yet been received and the case had not therefore been put up for 'review'. Even with regard to the 1940 cases (Nos 15 and 20) it does not appear from Mr Porter's affidavit that they were at any stage considered by the Governor. In Birendra Ganguli's case (No. 19), the arrest under R.129 took place on 16th August and the order under R.26 was made on 14th September by Mr Porter, in anticipation of the orders of the Home Minister, though the maximum period of detention permitted under R.129 was not due to run out till 15th October and the Minister was actually able to dispose of the case on 18th September. There was thus no urgency of any kind and no reason has been disclosed by Mr Porter why he thought it necessary to pass the order of detention himself. In the case of Niharendu Dutt Majumdar (No. 18) the only inference that can be drawn from Mr Porter's affidavit is that the case was never put up even before the Home Minister, in spite of the latter's express instruction that all cases of members of the Legislative Assembly must be put up before him. As Mr Porter occasionally took it upon himself to direct the issue of orders of detention, and there was not even a suggestion before the High Court or before us that any of the cases with which we are now concerned was put up before the Governor, it is plain that this case was finally disposed of by Mr Porter himself.

It was suggested on behalf of the Crown that before the issue of orders of detention under Rule 26, at least Mr Porter satisfied himself that it was necessary to issue the orders (see para 12 of his affidavit). In at least three cases, Mr Porter has stated that he considered the materials before him, and in accordance with the General order of Government directed the issue of an order of detention. In two of these cases, the matter was later submitted for consideration to the Minister on receipt of fuller material from the police. It is obvious that Mr Porter could not possibly have considered the fuller material, as he calls it, before directing the issue of an order under Rule 26. In the third case, as already pointed out by us, even the fuller material was still awaited on the date of Mr Porter's affidavit. Any consideration of the available material by Mr Porter before the issue of a detention order

did not amount to compliance, either in the letter or in the spirit, with the provisions of Rule 26. According to his own affidavit, Mr Porter was acting on the basis that the final order in each case had to be passed by the Governor or the Minister. Between a person dealing with a matter on the footing that the responsibility for the final decision has been laid upon his shoulders and one dealing with it on the assumption that he is dealing with it only provisionally till the matter can be considered on fuller material by some higher authority, there must be a wide difference both in fact and in law. We cannot condemn the procedure adopted in these cases too strongly. It would be difficult to conceive of a more callous disregard of the provisions of the law and of the liberty of the subject. The following observations occur in this Court's judgment in *Keshav Talpade's case*:⁴

'We confess that an order in the terms of that under which the appellant in the present case has been detained fills us with uneasiness. It recites that the Government of Bombay 'is satisfied that, with a view to preventing the said Keshav Talpade from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order and the efficient prosecution of the war, it is necessary to make an order of detention against him. This reads like a mere mechanical recital of the language of R 26. We do not know the evidence which persuaded the Government of Bombay that it was necessary to prevent the appellant from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order and the efficient prosecution of the war; but we may be forgiven for wondering whether a person who is described as an authorized petition-writer on the Insolvency side of the Bombay High Court was really as dangerous a character as the recital of all these four grounds in the order of detention suggests. The order does nothing to remove the apprehension we have already expressed that in many cases the persons in whom this great power is vested may have had no opportunity of applying their minds to the facts of every case which comes before them.'

We regret to have to observe that the apprehensions there expressed have on the material that has been brought on the record of the cases now before us turned out to be justified.

In view of what we have just observed, it was not necessary for us to examine each individual case to see whether the order of detention was open to objection. We have however as a matter of fact considered each case and have come to the conclusion that every one of these orders is bad in law as in no case does it appear that the matter was considered by the Governor at any stage, much less that at the time the order was made he was satisfied with regard to any of the matters set out in the order of detention. It was observed by Mitter J. that the position taken up by the learned Advocate-General before the High Court was that the orders of detention must be taken to be orders made by the Provincial Government itself, though none of the case (except one) had been brought up before or considered by the Governor himself. Sen J. also records:

'The learned Advocate-General stated that except perhaps in the case of Sasanka Sekhar Sanyal there was no question of the Governor being personally satisfied within the meaning of Rule 26.'

We pointedly drew the attention of the Advocate-General to these observations and he again reaffirmed, (i) that it was not his case that the Governor himself had considered the case of any of the eight persons with whom we are now concerned, and (ii) that he did not rely on any delegation by the Governor under S.2 (5), Defence of India Act. It is therefore unnecessary for us at this stage to consider the nature and incidence of the burden of proof or the kind of presumption to be made in the circumstances of the case, or even to consider

whether the evidence taken as a whole does not rebut the usual presumption as to the regularity of official acts. We are accordingly of the opinion that all the eight appeals should be dismissed.

[*Omitted: References to eight cases appealing against orders of Allahabad, Lahore and Madras High Courts, similar to the Bengal cases — Ed.*]

Spens C.J. — I have had the opportunity of reading and considering the judgment just delivered by my brother Zafrulla Khan on behalf of himself and my brother Varadachariar. With their judgment as to the validity of cl. (3) of Ordinance 14, I am in complete agreement. I further agree that in view of our decision on cl. (3), there is no necessity for the disposal of the cases before us to come to a decision on the validity of cl (2) of the Ordinance. On that part of the case I have nothing further to add. On the special points which have been raised by evidence in the Bengal cases, I take a somewhat different view to that by my brothers in regard to all the cases and in four I differ in my conclusion from that at which my brothers have arrived. I must therefore explain my reasons. Rule 26, Defence of India Rules, is in the following terms so far as material:

The Provincial Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian States the maintenance of peaceful conditions in tribal areas, or the efficient prosecution of the war it is necessary so to do, may make an order, directing that he be detained, . . .

The rule requires, in my judgment, that, before any order can validly be made in any case, the particular case shall be considered by someone duly authorized on behalf of the Provincial Government to pass an order for detention and that person shall be satisfied that it is necessary that the person concerned should be detained for one or other or more of the reasons specified in the rule. In each case, the order for detention is duly authenticated on behalf of the Provincial Government in accordance with the provisions of S.59 (2), Constitution Act. Each order contains a recital to the following effect:

And whereas the Governor is satisfied that with a view to preventing the said person from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, or the efficient prosecution of the war, it is necessary to make the following orders to continue his detention;

It has been suggested that (1) the form of the recital indicates by use of the word 'or' that no final consideration has been given to each case and that all that the investigating authority has done has been to form a rough conclusion that the case may come within one or other of the reasons quoted and that (2) the use of a cyclostyled form of order indicates a like lack of careful consideration, and that therefore the order is not good *ex facie*. I do not accept these arguments. In my judgment, the form of recital is one which a layman might reasonably use when he was satisfied that the case must come within one or other of the specified categories without being prepared to pledge himself with legal exactitude to any particular one or more of the categories. Nor do I think that the cyclostyling of the forms, having regard to the circumstances in which many of these orders may have been made, is sufficient to raise serious doubts as to the validity of the orders. I do not think therefore that the form of the order discloses anything irregular on these grounds on its face. The detenus further claim (a) that there is admissible evidence to establish that not only is that recital incorrect in each case but that in fact there was not, as required by the rule, any proper consideration by, or any proper

satisfaction on the part of, any properly authorized person before the orders for detention were made; and (b) that accordingly such orders were and must remain invalid.

The first question which arises is whether having regard to the recital contained in these orders, which on the face of them appear to be validly made, it is permissible for the truth and accuracy of the recital to be inquired into by this Court. It was suggested that S.59 (2), Constitution Act, made it impossible for any such inquiry to take place. In my judgment, however, section 59 (2) prohibits a duly authenticated order being called in question on one ground and one ground only, namely, that it is not an order or instrument made or executed by the Governor. It is quite a different thing to question the accuracy of a recital contained in a duly authenticated order, particularly where that recital purports to state as a fact the carrying out of what I regard as a condition necessary to the valid making of that order. In the normal case the existence of such a recital in a duly authenticated order will, in the absence of any evidence as to its inaccuracy, be accepted by a Court as establishing that the necessary condition was fulfilled. The presence of the recital in the order will place a difficult burden on the detenu to produce admissible evidence sufficient to establish even a *prima facie* case that the recital is not accurate. If, however, in any case, a detenu can produce admissible evidence to that effect, in my judgment, the mere existence of the recital in the order cannot prevent the Court considering such evidence, and if it thinks fit, coming to a conclusion that the recital is inaccurate. If authority is required for the views stated above, it can, in my judgment, be found in the speeches of their Lordships in 1942 A.C. 206 and 1942 A.C. 284.

In this case the detenus have, in fact, produced evidence which for the reasons explained in the preceding judgment of my brothers is admissible and which establishes from the report of answers and statements made by the Chief Minister in the Bengal Legislative Assembly in February and March 1943, that on 1st October 1942, orders were given to those by whom cases of persons detained under Rule 129 were being considered that if the police recommended detention under Rule 26 of any such persons, detention orders under Rule 26 should be made as a matter of routine without any further proper inquiry by, or satisfaction on the part of, any person at that stage that the cases really came within the provisions of Rule 26. In answer to the evidence put in by the detenus the Government of Bengal put in an affidavit deposed to by the Additional Secretary, Home Department. This affidavit confirms the giving of the order by the Home Minister as to the routine dealing with these cases above referred to, though it also suggests that despite the routine order some inquiry beyond that required by the routine order was made by the Additional Secretary. Further, the evidence indicates that the order may have been given in the interests of the detenus as it is suggested that persons detained under Rule 26 may have some privileges in jail, as compared with persons detained under Rule 129. This cannot, of course, justify the course of procedure adopted. It was wholly wrong to direct that orders should go as a matter of course on police recommendation and that the real consideration should follow the making of the order. It is impossible, in my judgment, for the Court to be satisfied that, after such a general order was given, there was, before the orders for detention were made, any full or proper inquiry by any one or any proper satisfaction on the part of any one, that each case was one where it was necessary to make an order for detention under Rule 26 without that person's mind having been influenced by the improper routine order. The facts disclosed in these cases appear to me to bring them within the exceptional class of cases referred to by Lord Wright in 1942 A.C. 206 at p. 261. In my judgment, therefore, none of the orders made in these cases, where persons had been arrested and were being held under Rule 129 after 1st October 1942, can be upheld as valid.

There are, however, three cases where the orders for detention were made before 1st October 1942. These consist of (1) case No. 15, (2) Case No. 19, and (3) Case No. 20. In Case No. 15 the order for detention was made as long ago as 24th October 1940, in case No. 19 the order for detention was made on 14th September 1942, and in Case No. 20 the order for detention was made also as long ago as 28th October 1940. The position as regards these cases is as follows. An application was made in each case under S.491, Criminal P.C., solely on the ground that by reason of the judgment of this Court in the *Talpade case*,⁵ the detention was unlawful. Each application was verified in the instance, solely by a formal affidavit. At a later date the detenu in Case No. 15 was given leave to put in and did put in an affidavit himself. This affidavit suggests nothing more than that his arrest and detention had not been made in good faith, an allegation quite insufficient by itself, unless supported by facts, to raise a prima facie case against the validity of the order for his detention. No such facts were alleged by him. In case No. 21, however, an affidavit by Dr Nalinakshya Sanyal was permitted to be put in and in the Court below it was taken to be assumed that a similar affidavit was put in each of the other cases then before the Court. The detenus in cases Nos 15, 19 and 20 are entitled to the benefit of this evidence. It is, therefore, to the evidence of Dr Sanyal, its annexure containing the report of the answers and statement of the Chief Minister in the Bengal Legislative Assembly, and the answering affidavit, of Mr Porter to which we must look for any evidence on behalf of these three detenus raising a prima facie case that these orders made prior to 1st October 1942 were invalid. In these three cases the position in law is, in my judgment, as follows. The application under S.491 is made by or on behalf of a detenu. The Crown justifies the detention by putting in the original order of detention with the recital of the satisfaction of the Governor and Ordinance, 14 of 1943. If the Ordinance or clause (3) thereof is held valid, the onus is then entirely shifted on to the detenu to establish at least a prima facie case that the order of detention in his particular case was invalid on grounds other than those derived from the decision in the *Talpade case*.⁶ It is not sufficient merely to allege that the detention is not in good faith or bona fide or anything of that sort. Facts have got to be alleged by the detenu sufficient to persuade the Court that, although the order ex facie indicates that everything that should have been done has been properly done, it is entitled or it is proper for the Court to call upon the Crown further to justify what is expressed to have been done in the order (*vide* Lord Maugham in 1942 A.C. 206 at p. 224 and Lord Wright's observations in 1942 A.C. 284 at p. 299). The detenu must accept the position that the presumption *omnia esse rite acta* applies to the order and that once the order is proved or admitted the Court should prima facie, until the contrary is proved, assume it to have been properly made. The burden of proof is clearly on the detenu, and it is for this Court to determine in these three cases whether that burden has been discharged.

I have read carefully through the extracts from the proceedings of the Bengal Legislative Assembly referred to by Dr Sanyal. I am unable to find anything in those extracts which goes to prove that these three particular orders, all made before, and too long before, 1st October 1942, were improperly made, save only a general statement by the Home Minister that cases may have occurred where persons arrested under R.129 have been detained although no order has been passed. Even if such a statement were sufficient prima facie to discharge the requisite burden of proof, which I doubt, any suggestion that anything of that sort occurred in any of these three cases is dispelled at once by the answering affidavit of the Additional Secretary. Further, there is nothing in the evidence of Mr Porter relating to these three cases which indicates that anything was done which could not, in my judgment, properly have been

authorized to be done by the Provincial Government. The materials in each case were examined by Mr Porter and the Home Minister consulted. In Case No. 15 and Case No. 20 the order was not made until the instructions of the Home Minister had been received. In Case No. 19 after Mr Porter's examination of the case he put the matter before the Home Minister, but as the period for which detention under R. 129 was about to expire or had just expired before he actually received the Home Minister's instructions he himself made the order before the period of detention under R.129 actually expired. The deduction which the Court should, I think, draw from this evidence is that whilst the normal procedure was for the Additional Secretary to examine the cases make his recommendations to the Home Minister and act on the latter's instructions Mr Porter would be justified in an emergency in making the order himself and reporting the matter to the Home Minister. Such a procedure might, in my judgment, both in fact and in law have been validly authorized by the Provincial Government. In the absence of proof that the procedure disclosed in these cases in Mr Porter's affidavit either was not in fact or could not in law be properly authorized by the Provincial Government, in my judgment the presumption that everything was properly done should be held by this Court to prevail. There is no evidence that in fact what was done was authorized. I have considered whether in law there is anything to prevent the duty of dealing with these cases being assigned to Mr Porter, an Additional Secretary, to investigate and report to the Home Minister and act normally on his instructions but in an emergency to act himself. In my judgment, there is nothing in law which would prevent this procedure being authorized by the Provincial Government. If therefore the Court ought to act upon the presumption, there is no legal difficulty in the way.

It is true that neither Mr Porter's affidavit nor the statements and answers of the Home Minister set out what in fact was the prescribed procedure for dealing with these cases, or indicate the rules of business or other authority under which such procedure could be properly prescribed. The result was that the Advocate-General for Bengal took such facts as appeared from the evidence and attempted to establish affirmatively from these facts and certain section of the Constitution Act and rules of business of the Provincial Government that the procedure adopted was in fact duly authorized. If the burden of establishing this affirmative case had been on the Advocate-General, I should have felt difficulty in finding that he had discharged it in the absence of clear evidence of what was the procedure prescribed and of the authority by whom and the manner in which it was prescribed. The Advocate-General did however satisfy me by his argument that what appears from the evidence to have been done might legally have been prescribed by the Provincial Government and in my judgment, that is sufficient to rebut any suggestion which arises, if indeed any suggestion does arise, from the evidence on which these detenus are entitled to rely as suggesting the inaccuracy of the recitals in the orders for detention. At one time I was inclined to agree with my brothers that having regard to the provisions in S.2 (5), Defence of India Act, there ought to have been an express delegation to some officer under that section to deal with these cases. I am satisfied, however, that is not necessary and that clause only requires a delegation where matters cannot be dealt with by the Provincial Government in the manner in which it normally deals with its executive business.

I have come to the conclusion that the Constitution Act on its true construction does authorize the Provincial Government to deal with the executive business arising out of the administration of the Defence of India Act and its rules, not excepting Rule 26, in accordance with rules of business made under S.59 (3) and the powers conferred by S.49, and that those

powers are not controlled and superseded (to use an expression very familiar in this case) but are supplemented by the express power of delegation, contained, in S.2 (5), Defence of India Act, to any officer or authority not being an officer or authority subordinate to the Central Government. This power of delegation so conferred goes further as regards the selection of the person or authority to execute the powers or duties on behalf of the Provincial Government than any powers expressly or impliedly available under the powers of the Constitution Act to a Provincial Government for carrying out its executive duties. This power of delegation appears to me to be a most useful supplementary power to deal with difficult or distant administrative problems which would strain the ordinary machinery of Provincial Government. Moreover if this express power was intended to supersede or modify the powers contained in the Constitution Act for the carrying on of the executive business of the Province, I should have expected the provisions of the Defence of India Act to have made that position clear beyond doubt and to have found sub cl. (5) of S.2 introduced by some words such as 'notwithstanding anything in the Government of India Act, 1935' to indicate that if any of the new duties and powers were to be assigned to officers of the Provincial Government, such assignation was not in any case to be effected under the normal powers of the Government of India Act but must be effected by some delegation under sub-clause (5) of S.2. It follows that I accept the argument of the Advocate-General that such matters as those to be dealt with under Rule 26 could be dealt with in accordance with rules of business made or to be made under S.59 (3), Constitution Act.

I am accordingly of the opinion that in these three cases the appeals should succeed. There remains Case No. 18. This is the case of a detenu who had not previously been arrested under R.129 when the order for his detention was made. His case also did not come within the purview of the objectionable routine order. Here again the evidence upon which the detenu is entitled to rely (which includes Dr Sanyal's affidavit and the annexure thereto) does not appear to me to raise a *prima facie* case against the accuracy of the similar recital in the order for his detention. On the contrary, in this case the deduction which I draw from the whole evidence is that the procedure adopted is consistent with the literal accuracy of the recital, namely, that the Governor satisfied himself personally before the order was made. What I have said of the last three cases equally applies to this case. In my judgment therefore the appeal in this case should also be allowed.

There are two points on which I desire to say something further: (1) It was suggested by the Advocate General of Bengal that the satisfaction required by rule 26 was not a condition precedent to the exercise of the power. I do not take this view. I have already indicated that in my opinion it is a condition to be fulfilled before an order can be validly made. This condition requires in my judgment the exercise of executive discretion and demands a quasi-judicial consideration of the materials before him by the person authorized to deal with the matter. I use the phrase 'quasi-judicial' as no doubt the person to be satisfied can allow his mind to be influenced by materials and evidence at which no one acting in a strictly judicial capacity could look. But in my judgment the person to be satisfied has to direct his mind expressly to those materials in the light of the terms of R. 26 before coming to a decision in each case. (2) Having regard to the view which I have taken of these cases from Bengal, it is not necessary, in my judgment, to determine who or what is meant by the 'Provincial' Governmental in R.26. Whatever meaning is given to that phrase, whether applying the definition from the General Clauses Act or not, in my view the procedure adopted in these cases could have been legally authorized under the Constitution Act by rules of business made

under S.59 (3) of that Act, and, as I have previously said, in my view that is sufficient to dispose of these cases. In my judgment, these four appeals should be allowed, but in view of the judgment of my brothers the appeals will be dismissed in the same manner as the other Bengal appeals. As regards the appeals other than the appeals from Bengal, I, of course, agree with the judgment of my brothers that those appeals also shall be dismissed.

Appeals dismissed.

K.S.

1, 2. Doc 27 – See also Doc 90

3, 4, 5 & 6 Doc 27

84: Kantilal Mangaldas and others (Applicants) v. Emperor [Beaumont C.J., Lokur and Rajadhyaksha J.J. Full Bench (21 April 1943)]

AIR, Vol. 31, 1944, Bombay pp. 121-4

Criminal Application No. 274 of 1943, Decided on 1st September 1943, from decision of Special Judge, Ahmedabad, Dated 21st April 1943.

Beaumont C.J. – These are rules issued on behalf of various persons who were convicted by the Special Courts established under the Special Criminal Courts Ordinance, 2 of 1942, and the question, which arises in all of them, is whether the validating ordinance 19 of 1943 is valid. In all the cases the trials were remitted by the District Magistrate to the Special Judge of the District, and he convicted the various accused, and sentenced them to different sentences.

On 4th June 1943, the Federal Court held that Ordinance 2 of 1943 was ultra vires and invalid as to Ss.5, 10 and 16 and the effect of that decision was that all the convictions by the Special judges appointed under that ordinance were invalid, and necessarily all the sentences passed were also invalid. On 5th June that is the day after the Federal Courts decision, Ordinance 19 of 1943 which is the impugned Ordinance, was promulgated by the Governor-General under S.72 in Sch. 9, Government of India Act. The Ordinance by S.2 repeals the Special Courts Ordinance 2 of 1942. Section 4 directs that proceedings in all cases pending under the Ordinance, the trial of which had not concluded, are to be void, and the cases are to be transferred to the normal Courts, and S.5 grants indemnity to persons who had acted under the repealed Ordinance. No difficulty arises under those sections. The difficulty arises under S.3, which is in these terms.

- (1) Confirmation and continuance, subject to appeal, of sentences (1) Any sentence passed by a Special Judge, a Special Magistrate or a Summary Court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of this section, shall continue to have effect, as if the trial at which it was passed had been held in accordance with the Code of Criminal procedure, 1898 (5 of 1898), by a Session

- Judge, an Assistant Sessions Judge or a Magistrate of the first class respectively, exercising competent jurisdiction under the said Code.
- (2) Notwithstanding anything contained in any other law, any such sentence as is referred to in sub S.(1) shall whether or not the proceedings in which the sentence was passed were submitted for review under S.8, and whether or not the sentence was the subject of an appeal under S.13 or S.19, of the said Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under said Code as if the sentence had at a trial so held been passed on the date of the commencement of the Ordinance.
 - (3) Where any such sentence as aforesaid has been altered in the course of review or on appeal under the said Ordinance, the sentence as so altered shall for the purposes of this section be deemed to have been passed by the Court which passed the original sentence.

What it really comes to is that sentences passed by the Special Courts are to have the same effect as if the trial, at which such sentences were passed, had been held under the ordinary criminal law and the accused are to have the same right of appeal against the sentence passed at such a notional trial as there would have been if the notional trial had been the real trial. On these applications under S.491, Criminal P.C., we are not really concerned with sub-section (2), which gives the right of appeal, we are only concerned with the validity of sentences. But in the case before the Calcutta High Court, to which I will refer presently, it was suggested that serious difficulties were likely to arise under sub-section (2), and that the right of appeal thereby conferred is largely illusory, and it was held that the anticipated difficulties arising under sub-section 2 may properly influence the construction to be placed on sub-section (1). With regard to that argument I will only say that I do not agree that the right of appeal conferred by sub-section (2) is illusory.

[*Omitted:* Some technical arguments against the position of the Calcutta High Court -- Ed.]

The question, which arises for decision is whether an Ordinance validating sentences of Courts, which are not legally constituted, and, therefore, not legally capable of passing the sentences, is within the competence of the Governor-General. It was pointed out that S.3 does not purport to validate the convictions; it only validates the sentences. But in dealing with habeas corpus applications under S.491, Criminal P.C., it is the sentence with which the Court is concerned, and not the conviction. It was suggested further that S.3 is invalid, because it seeks to set aside, and treat as of no effect, the decision of the Federal Court by which the Government of India is bound. There would be considerably more force in that argument if the section had provided that the convictions passed by these illegal Courts were valid, and it was probably to forestall such an argument that the convictions were not validated, though the sentences were. It seems to me impossible to argue that this Ordinance sets at naught the decision of the Federal Court. It repeals the Special Court Ordinance 2 of 1942, so that Ordinance has gone even if an appeal to the Privy Council from the decision of the Federal Court succeeds. It accepts the Federal Court's decision that the convictions by the Special Courts are invalid. All that the Governor-General does by Ordinance 19 is to say that it is necessary in the interests of the peace and good Government of British India that persons, who have been found by officials of the State, normally competent to exercise judicial functions though not competent in the particular cases involved, to have been guilty of acts prejudicial

to public safety, should continue to suffer the sentences which those officials thought appropriate, unless the sentences are altered in appeal or revision by the ordinary Courts. If the Governor-General thinks that such action is necessary in the interests of the peace and good Government of British India, his action does not in any way conflict with the decision of the Federal Court as to the invalidity of trials by the Special Courts.

The only point, therefore, which we have to consider is whether the validating of sentences illegally passed is competent to the Governor-General. It has been pointed out by the learned Advocate General that legislation validating sentences not passed according to law is not unusual. Reference was made to S.5, Indemnity Act, 1929, and to the decision of the Privy Council in 1907 A.C. 93 in which the Privy Council was dealing with a Natal Statute validating sentences passed by Courts martial, and also to the observations of Sir Maurice Gwyer in 1940 F.C.R. 110, particularly at pp. 134 and 136.

In India the question turns first of all, on the construction of S.72 in Sch. 9 Government of India Act, and under that section an Ordinance passed by the Governor-General and in the like force of law as an Act passed by the Indian Legislature. The restriction in the section providing that the Ordinance is only to remain in force for six months has been removed during the pendency of the present war, so that the question narrows itself into this; whether a validating enactment of this character is within the competence of the Indian Legislature. That depends on whether such enactment falls within any of the three lists in Sch. 7, Government of India Act. The Central Government can at the present time legislate in matters included in any of the three lists. I feel no doubt that a validating enactment of this character falls within items 1 and of the Concurrent List 3 as coming within the general headings 'Criminal Law' and 'Criminal procedure' I think it would also come within item 1 of the provincial List 2 as covered by 'the administration of justice'. Therefore I feel no doubt that this validating Ordinance is one which it was competent to the Governor-General to pass.

The question has been considered in three other High Courts Calcutta, Madras and Patna. In the Calcutta High Court in 47 C.W.N. 757 the majority of the Court came to the conclusion that S.3 of the impugned Ordinance only validated sentences up to the time at which an appeal or revision application against the sentence could be heard, and that it would be the duty of any Court exercising the appellate or revisional jurisdiction to set all the sentences aside, and direct that the accused person be thereupon tried under the Ordinary law of the land. I must confess that I share the difficulty felt by the Patna and Madras High Courts in seeing how the conclusion of the Calcutta High Court can be reconciled with the language of S.3 of the Ordinance. There is nothing whatever in S.3 to suggest that the period for which the sentences were validated was to expire as soon as an appeal or a revision application was heard, and if that was the effect of the Ordinance, it would render difficult the position of a persons convicted by a Special Court who did not desire to appeal from the sentence, and preferred to serve out the sentence, rather than run the risk of a new trial and, possibly, an enhanced sentence. There is, moreover, nothing whatever in S.3 to suggest that in all appeals and revision applications under the section the Court is bound to allow the appeal, and set the convictions aside, and direct the accused to be tried under the normal law of the land. If the Ordinance had so directed, difficulties would have arisen in case an appeal to the Privy Council against the Federal Courts decision were successful, in which case any further of the accused would presumably be a nullity. Moreover, as the Patna High Court has pointed out, if the intention of the Governor-General is that all the persons convicted by the Special Courts should be set at liberty, and retried by the normal Courts, it was quite unnecessary to pass

S.3 because if that section has been omitted, all persons convicted by the Special Courts would have been released, and there would have been no legal objection to those persons being prosecuted again under the Criminal Procedure Code. I am not, therefore, prepared to accept the view of this Ordinance which was taken by the Calcutta High Court.

The Madras and Patna High Courts both considered that Ordinance 19 was valid, and as I agree with their decision and the reasons given by them, and as those Courts have discussed in considerable detail the various matters which have been argued before us, I do not think necessary to cover again the ground covered by those decisions. I agree particularly with the reasoning in the judgment (if I may say so, the admirable judgment) of Brough J. in the Patna Court. In my judgment, Ordinance 19 of 1943 is valid, and all these rules therefore must be discharged.

Lokur J. — I agree and have very little to add. It is now well settled by the ruling of the Privy Council in 58 I.A. 169 that under S.7 in Sch.9, Government of India Act, 1935, which authorizes the Governor-General. In cases of emergency, to promulgate Ordinances for the peace and good Government of India, the Governor-General alone is the sole judge of whether the Ordinance conduces to the peace and good Government of British India as contemplated by the secun. It is also settled by A.I.R. 1943 F.C. 36 at p. 54 that the Central Legislature has power at present to make laws with respect to any matter in any of the three lists in the Legislative Lists given in Sch.7, Government of India Act, and, as held in A.I.R. 1943 F.C. 1 the Governor-General can also, under S.72, make and promulgate Ordinance in respect of any such matter. In Ordinance 19 of 1943, the Governor-General has announced that an emergency has arisen to make that Ordinance and his discretion in the matter cannot be questioned by us. That emergency was evidently the ruling of the Federal Court in A.I.R. 1943 F.C. 36 that the setting up of the Special Courts under Ordinance 2 of 1942 was ultra vires, and, therefore, the conviction Accepting that decision, the Governor-General abolished those Courts but has given effect to the sentences passed by them by S.3 (1) of Ordinance 19 of 1943. In doing so, he has not in any way flouted the decision of the Federal Court. What he has stated in effect is: I now know that the Special Courts had no jurisdiction to try the accused persons sent to them and, therefore, the proceedings held by them are not judicial proceedings and the conviction of those persons is illegal. But they, as the servants of the Crown, have made an inquiry into the accusations made against those persons in the manner intended by me and have come to the conclusion that they have committed the illegal acts imputed to them. Hence, though their conviction cannot stand, I think it necessary for the peace and good Government of India that they should undergo the sentences proposed by them'. The Governor-General has, therefore, ordered that the sentences should be given effect to. He might have asked the provincial Government or any officer to find out whether certain persons had committed certain illegal acts and might have issued an order as to how they should be dealt with even without a formal trial, if such a course was deemed by him to be necessary in the interests of peace and good Government of India. For validating the sentence it is not necessary that the conviction proceeding it also should be validated. This is clear from the rulings in 1907 A.C. 93 and 55 Bom. 263. Out of respect for the decision of the Federal Court, the Governor-General has not validated the convictions by the Special Courts, but has only ordered the sentences to be given effect to on the strength of the conclusions arrived at by specially appointed officers in what have now proved to be non-judicial inquiries, and it was open to the Governor-General to act upon the result of those inquiries to make up his mind as to what was necessary for the peace and good Government of British India.

The power to legislate in this behalf falls within Nos 1 and 2 in List 3 and also No. 1 in List 2 in Lists in Sch.7, Government of India Act, 1935, as pointed out by Lord the Chief Justice. This direction giving effect to the sentences is contained in the first part of sub-section (1) of S.3 of the impugned Ordinance. The second part from the words 'as if' is intended only for the purpose of sub-section (2) to show where the appeal in each will lie. The use of the expression 'as if' shows that the proceedings before the Special Courts themselves are not validated or declared to be judicial proceedings. In this case we are not concerned with the appeals, if any are filed under sub-section (2) of S.3. But that sub-section only shows that although the Governor-General is satisfied on the inquiries already made that certain persons deserved to be made to undergo various sentences, he is anxious to give them an opportunity to show that they have really not committed the acts imputed to them. That is only a concession given by sub-section (2) of S.3 and for that purpose the second part of sub-section (1) had to be added. But these do not affect the first part, which is the only operative part of sub-section (1). It was quite ultra vires of the Governor-General to promulgate such an Ordinance and I agree that the rule should be discharged.

Rajadhyaksha J. — I agree with the judgment delivered by his Lordship the Chief Justice, and have nothing to add.

Rule discharged.

85: Government of Bengal to the Government of India

File No. 44/57/43 - Home Poll (I)
[NAI]

Telegram R.

Confidential
6377

From . . . Bengal, Calcutta.

To . . . Home Department, New Delhi.

No. 152-W

Dated (and received 1st) September 1943. T.O.O. 2015 T.O.R. 2210.

Immediate

Federal Court judgement as reported in press is obscure but appears to leave validity of Section 2 of Ordinance 14 unsettled. If this is so we are advised that Calcutta High Court judgement declaring this Ordinance invalid so far as section 2 is concerned will bind us until over-ruled and that we consequently cannot confidently order detention under Rule 26. Furthermore it appears to follow from the majority of judgement that every order hitherto passed in which the Governor had not explicitly applied his mind to the case is invalid and that the Federal Court's decision upholding validity of Section 3 of Ordinance will not suffice to save our orders hitherto passed in only a very few of which has the case in fact been

referred to the Governor. We therefore are faced with the probability that all existing orders under Rule 26 will be challenged and may be declared invalid by the High Court and that neither in the case of present DETENUS if thereupon released nor in fresh cases have we yet power to pass orders of detention except by commitment under Regulation 3 use of which is agreed to be undesirable. We require therefore immediately both orders hitherto passed and we urge the promulgation of the Bartley Ordinance with modification to achieve this end. Porter's d.o. letter No. 1207-PS dated July 23rd refers.

Note: The 'Bartley Ordinance' mentioned above refers to a tentative proposal to reproduce D.I. Rule 26 as substantive law – Fd.

86: Army Department views on the judgements on DIR 26 dated 1.9.43–4.9.43 (extracts)

File No. 44/57/43 – Home Poll (I)
[NAI]

Home Department

I have had some further discussion with Sir George Spence about this case,¹ but hesitate to submit it for H.E.'s orders without some further consultation with H.M., who is still indisposed. I have, however, made certain amendments to the draft summary² and, in particular, have substituted a revised para for paragraph 6, which was written before the decision of the Federal Court regarding the validity of Ordinance No. XIV of 1943 was known.³ Since the decision of the Federal Court does not invalidate that Ordinance, a reference to the matter is no longer required. Meanwhile, if the case does eventually go to Council, we are under an obligation to consult any other Departments of the Government of India which may be concerned. The only other Department of the Government of India that is concerned to any great extent is the War Department. The file should therefore, go at once to Mr Trivedi for any comments that he may have to make. It is requested that the file should be treated as immediate and be returned to this Department as soon as possible.

(R. Tottenham)
1.9.43.

Additional Secretary.

War Department
Mr Trivedi

Notes in the War Department – (Most Secret)

Rule 26

Rule 26, and the Emergency powers Act, Regulation 18B, on which it appears to be based, were presumably designed to deal with the Fifth Columnist who is an individual within a country liable to aid and abet the enemy by espionage, sabotage, propaganda, stirring up internal disorder etc.

2. Speaking from memory it was on 14th May 1940, during the course of his 'We will never surrender' speech that Mr Churchill said, in effect – 'There is a class for which I have not the slightest sympathy. Parliament has given us the power to put down Fifth Column activities with a strong hand and we will use these powers until we are satisfied, and more than satisfied, that this malignancy has been stamped out from our midst'. This, I suggest, referred to Regulation 18B.

3. From the War Department point of view, it is not the Fifth Columnist in our midst with whom we are primarily concerned. It is the individual entering India from enemy occupied territory who, with good reason, we suspect may either be tainted, or even be an active enemy agent.

4. It will be appreciated that in the great majority of cases concerning persons who enter India from enemy occupied territory, the evidence lies in that territory and direct access to that evidence is therefore denied to us. Long and detailed interrogation is therefore usually necessary, involving reference to central records bearing on the Japanese 'I' offensive, and not infrequently investigations in provinces. These interrogations are initially undertaken by the Security Corps and amplified where necessary by C.S.D.I.C. In order to make these interrogations suspects must be held, and it is arguable that the system of holding suspects in F.I.C's under detention order under Rule 26 was always clumsy, as this Rule designed for the continued detention of persons against whom there were grounds for believing they would commit some action prejudicial to the internal War effort.

5. It follows as regards F.I.Cs and C.S.D.I.C. that what is required is clear cut powers to hold during interrogation for which Rule 26 was not intended.

6. When as a result of interrogation it is decided that a suspect is an enemy agent, fundamentally disloyal or (from the information he possesses) a menace to the Security of plans and Operations, then, at that stage we require powers of detention, for as long as may be necessary from the military point of view, to detain him.

7. For this purpose, Rule 26, as it at present exists can and has been used, although not specifically designed for this purpose. The proposed severe limitations, however, will make it impossible for military purposes, in view alone of the paramount necessity for secrecy and speed in disposal.

8. To sum up. We contend.

- (a) Rule 26 was not designed to deal with the problem offered by the external agent, and the legal objections raised to the operation of that Rule do therefore NOT apply to the external agent, but to the internal 'Fifth Columnist'.
- (b) To deal with the external agent the War Department requires.
 - (i) Specific power to arrest and hold pending and during interrogation.
 - (ii) Power to order detention in the case of persons who, as a result of interrogation, are shown to be directly dangerous to the successful military prosecution of the War. It must be made clear that any order under b (i) or b (ii) above should not be called in question in any court.

R.C. Howman.
Brig.
D.D.M.I. (S)
29.43

D.M.I.

I agree with the above noting and would only point out that we may well have up to 10, 000 personnel (we already have some 250) from enemy occupied territory whom it will be necessary to detain under some powers. Already we have over 250 either actually detained permanently or pending disposal. If every person detained is to be informed in full of the reasons, allowed to submit appeals, and then each case, is to be reviewed every six months, we will need a very large extra staff and so will D.I.B. and Home Department. I do not think this aspect has been realized during the noting on this case, nor the extremely grave nature of the problem afforded by Jifs and I.I.L.⁴ To loosen our powers of dealing expeditiously with this type at the present juncture cannot be contemplated from the military security angle.

W.J. Cawthorn
Maj. Gen.
D.M.I.
2.9.43.

War Dept. — Mr Trivedi

I have discussed with Sir Richard Tottenham and explained to him that we must have more time to consider this matter which is vital to us.

C.M. Trivedi
2.9.43

H.D. Home Dept. — Sir Richard Tottenham

The above notes and my discussion with General Cawthorn and Mr Trivedi make it clear, I think, that we cannot afford to rush through these amendments to Defence Rule 26, without paying special attention to the military problems. The War Department have now under consideration a proposal for the issue of an Ordinance applying to the Province of Assam and certain parts of Bengal which will give the military authorities certain special powers in those areas. I have suggested to Mr Trivedi that he might consider the possibility of working into that Ordinance some clause which would give the military authorities the powers that they want with regard to enemy agents or suspected enemy agents coming in from outside the country in such a way as to render the use of Rule 26 unnecessary.

2. I may add here that the Bengal Government have expressed certain doubts as to the validity of their power to issue orders under Rule 26 because the Federal Court did not finally decide whether section 2 of Ordinance No. XIV of 1943 was valid. This matter has been dealt with separately in consultation with legislative Department, whose present view is that in spite of the Bengal view, it will not be necessary to issue the Bartley Ordinance forthwith. If the Bengal Government contest this view of the Government of India, it may still become necessary to issue the Bartley ordinance; but even so it must be doubtful whether the amendments proposed on this file could be incorporated in time.

3. In view of the uncertainty of the position and the fact that H.M. is still unable to deal with files, I do not think I should be satisfied in submitting these papers for H.E.'s orders at present, but I have amended the Summary and will submit it to H.M. as soon as possible.

R. Tottenham
2.9.43.
Additional Secretary.

I understand that H.M. may now be able to deal with some papers and I submit this file as arranged.

R. Tottenham

4.9.43

- 1 See Doc 70 on this subject (Revising rules).
- 2 Not printed.
- 3 Doc 76
- 4 I.I.L. stands for the Indian Independence League founded in South East Asia. Jif refers to the Indian National Army

87. Nagpur High Court judgement (Provincial Government vs Madan Gopals' case)

File No. 3/16/43 – Home Poll (I)

[NAI]

Copy of Order dated the 1st September 1943, in Civil Revision No. 292 of 1942 decided by the Honourable Mr Vivian Bose – Provincial Government V. Madangopal

Madangopal, the seventh non-applicant in this revision, is a security prisoner detained under Rule 26 of the Defence of India Rules. Being a non-applicant to this revision notice was issued to him in the usual way through the Superintendent of the Nagpur jail. He made the following endorsement on the summons:

'Received the summons. I want to appear before the Court.'

2. The Superintendent returned the summons with the following remarks:

'Served and returned. Mr Madangopal is confined in the jail as Class I security prisoner. In case he is permitted to appear in the Court on the date of hearing, the proper order of attendance of the prisoner in Court may kindly be drawn up.'

3 The case was then put up to me for orders and I passed the following order:

'The seventh non-applicant is not represented by counsel. He has a right to be heard and so will be produced in court on the date of the hearing which will be intimated to the proper authorities. If however he is subsequently represented by counsel the permission will be withdrawn. Also if he appears in person counsel will not be allowed to represent him'.

4. I confess the order is not as clear as it ought to be but I did say that Madangopal had a right to be heard and that he should be produced in court unless subsequently represented by counsel. I am afraid I dealt with it more or less as a routine matter and did not realise at the time that there was any difference between a security and any other prisoner. I ought to have issued notice to the Advocate-General and ought to have heard him before making the order. As it was passed behind his back it does not bind the Provincial Government. Though the provincial Government is not a party to this revision it is the authority. Primarily concerned with the right to detain and so should have been heard.

5. As soon as my order was brought to the notice of Government it very properly asked for an audience through the Advocate-General This was granted, and now I have to deal

with the Provincial Government's challenge to this Court's authority and jurisdiction to make an order for production in a case of this kind.

6. As the matter is of importance I asked Mr Walter Dutt very kindly to act as *amicus curiae*. He consented, and I am greatly indebted to him for his assistance, as also to the learned Advocate-General.

7. Having considered the matter carefully I am of opinion that the High Court has power to direct the attendance of security prisoners for purposes such as the present, but that as a matter of discretion it will not make such an order if the detenu can be adequately represented by counsel or otherwise, or if his interests are not likely to suffer by reason of his non-attendance, and never unless it is essential in the interests of justice that he should be produced.

8. I confess the question is one of difficulty and involves deeper considerations than would appear at first appearance in a variety of cases in order to appreciate what I conceive to be the true rule.

9. Take a case in which, the detenu is the sole defendant or respondent. What happens if he does not appear? The Court could I conceive, exercise its inherent powers of adjournment and adjourn the case until such time as he was released. But think of the injustice this would cause to the innocent plaintiff or appellant against whom the Government has no grievance. His rights to the property in suit, or to whatever other matter is being litigated, would be indefinitely postponed. Courts would be slow to punish or penalize a wholly innocent man in this way for no fault of his.

10. But what is to happen if the Court decides to proceed? It would have to proceed *ex parte* and that would immediately give the detenu a right to have the *ex parte* decree set aside. According to at least one High Court this right can be exercised in special circumstances even after limitation (See Mulla's Civil procedure Code, 11th Edition page 1175 and 640). I say nothing as to whether that is right but it leaves the law uncertain and so keeps the unfortunate plaintiff or appellant in indefinite suspense. Also, apart from the law of limitation and apart from inherent powers, it would be difficult to hold that inability to appear in circumstances like these would not constitute 'sufficient cause' at any rate when the application is made within time.

11. Well, having restored the case to file, what then? Cases are conceivable in which it would be impossible for a party to present his case properly unless he is personally present, particularly when it is essential that he should enter the box in person. However much a friend or a relative or a pleader can be instructed to make the application for restoration to file, it may be quite impossible to proceed further with any hope of success unless the man primarily concerned is personally present. Also, there are times when witnesses cannot be adequately examined or cross-examined without the presence in Court of the client. Mere instructions are not enough in such cases as anyone with experience at the bar will readily understand. If however, no one appears again after the case has been restored to file, another *ex parte* decree would have to follow. And after that there would be another application for restoration. And so the cycle would continue. Why should an innocent plaintiff or appellant be thus harassed and penalized?

12. Take next a case where the detenu is the sole plaintiff or appellant. Again, the case would either have to be indefinitely adjourned or the court would be bound to dismiss it in default and one would be involved again in the endless circle of dismissal and restoration to file.

13. If, on the other hand, courts decline either to adjourn indefinitely or to restore to file

it will mean that the detenu will in certain cases lose his property or his rights altogether. Is that intended?

14. There is no doubt about the law apart from these special acts. A person is entitled to appear and present his case in person. Order 3, rule 1 of the Civil procedure Code, provides for that in India. It is the same as the English rule which is given in 8 Halsbury (Hailsham edition, page 283, and as to restoration after dismissal in default, at page 285). It is a right conferred by law. How far has this right been taken away or modified by the Defence of India Act and the Rules?

15. Rule 26 (b), which is the rule applicable here (I will assume it is ultra vires for present purposes), only authorizes Government to 'detain' a person. It does not authorize it to punish or penalize him in any other way, nor does it authorize acts which might deprive him of his property or other civil rights not bound up with his personal freedom. Still less does the Rule contemplate consequences of the kind I have outlined above in respect of wholly innocent third parties. Quite the contrary. Section 15 of the Defence of India Act states that 'Any authority or person acting in pursuance of this Act shall interfere with the ordinary avocation of life and the enjoyment of property as little as may be consonant with the purpose of ensuring the public safety and interest and the defence of British India'

16. Now Rule 26 invests the Central and Provincial Government and such other person to whom the power is delegated to 'detain' the person and to impose restrictions in respect of his communications with other persons if it is satisfied in respect of each particular person etc. No order has been shown me regarding the satisfaction of any of these authorities regarding the particular person before me. (See as to this my judgment in Prabhakar V. Crown: L.I.R. 1943 Nag. 154 at 166 and 167). All I have been referred to here are the general rules framed under Notification No. 348-70 III dated 5.5.1942. But those rules are framed under Rules 26 (5-A) and are rules to which the 'satisfaction' clause does not apply.

17. It is true section 16 states that no order made in exercise of any power conferred by or under the Act shall be called in question in any civil court, but the notification in question is not my 'order made' within the meaning of the section although it calls itself an 'Order'. It merely frames a set of rules. And in any case sub-rules 5 and 5A do not authorize the making of an order but only the determination of conditions under which detenus may be kept in confinement.

18. An 'Order' within the meaning of section 15, is a direction or command addressed to some particular person or persons or generally. A set of rules or conditions setting out the conditions of detention are no more orders in this sense than, shall we say, the Prisoners Act or the Prisons Act. The distinction is clear in Rule 26 itself, and merely to label a set of conditions as an 'Order' will no more make it one than labelling a package of sugar or salt will turn the sugar into salt. The part of Rule 26 which authorizes the passing of orders is sub-rule (1). The two matters are, in my opinion, separate and distinct. This is seen from a perusal of section 2 of the Act and Rule 26.

19. Section 2(2) provides that —

' . . . the rules may provide for, or may empower any authority to make *orders* providing for . . .

(x) the apprehension and detention in custody of any person reasonably suspected etc.'

Rule 26(I) states—

‘The Central Government or the Provincial Government, if it is satisfied *with respect to any particular person . . .* may make an order.

(b) directing that he be detained’. This justifies the *order* of detention, but it has to be passed separately in respect of *each particular person*.

20. Then comes sub-rule 5:

‘So long as there is in force in respect of any person *such an order as aforesaid directing that he be detained* he shall be liable to be detained in such place and under such conditions . . . as . . . the Provincial Government . . . may from time to time *determine*.

(5A) Where the power to *determine* etc. . . .’ The change in language is significant and was I think, intended because it is obvious Government would not want to pass orders afresh in each particular case regarding the conditions of detention though it has to do so regarding the detention itself. The conditions would be specified generally and made applicable to all.

The rules drawn up under sub-rule 5 and 5A are therefore not the ‘orders’ contemplated by sections 2 and 16 and authorized by Rule 26. The court consequently has power to scrutinize the conditions ‘determined’ under sub-rule 5 and 5A and to see that they do not contravene any law and in particular the law laid down by section 15.

21. But that apart, a detenu, who is prevented from appearing in circumstances which are likely to lose him his property, can apply under section 491 of the Criminal Procedure Code and complain of improper detention.

22. The High Court has power to order that a person detained be dealt with according to law’, and to release him altogether if he is ‘improperly detained’. It has even power to enquire into the good faith of any particular detention: see I: L.R. 1943, Nag. 154.

23. The law says — not only the general law, but also the special law enacted by the Defence of India Act and subject to which all these Rules are made — that a detenu’s enjoyment of his property is to be interfered with as little as may be convenient with the purpose of ensuring public safety etc.

24. It is difficult to see how public safety and the like are likely to be endangered if a man is permitted to attend court under escort and conduct his case. The hearing could be in camera if Government so desires. The court room could be guarded and precautions could be taken to ensure that the detenu held communication with no one but the Judge. The man would be in full ‘detention’ the whole time. Government’s right to detain him would not be affected.

25. Or again, in suitable cases, Government could provide the detenu with counsel as it does in the case of pauper accused.

26. If with all these alternatives before it Government were still to refuse — I do not for a moment suggest that it would be so unreasonable if this court were to hold that it was necessary for the ends of justice to have the man here — but if it were to do so, then I conceive that it might be proper in a given case to conclude that such conduct indicates bad faith and that the real object of the detention was not the safety of the realm and the safeguarding of the public interest but spite against the particular detenu and an attempt to punish him indirectly by doing that which cannot be done directly, namely action which would either make him lose his property by non-attendance in court, or, at the very least, would drive him to repeated

applications for restoration to file. Bad faith would attract the provisions of section 491, and as I see it, the High Court would be entitled to hold that detention 'according to law' means such detention as is consistent with section 15, that is to say, a detention which enables the detenu to safeguard his rights to property in a reasonable manner, rights which are not confiscated or take away or destroyed by the detention but which might in certain cases be seriously imperilled by Government's refusal to permit personal attendance in court. As I see it the Court would have power to see that this was put right and to order that the detention be 'according to law'. If Government were still to be obdurate not only would the court be entitled to release the detenu altogether on the ground of bad faith but also to bring into play its coercive processes in contempt.

27. I repeat that I must not be understood to suggest that Government would go against this Court's orders after it has been given an audience, but as this Court's powers have been challenged it is necessary for me to explain exactly what they are, from where the authority to act is derived, and how the powers can be brought into play.

28. But though the Court has these powers it will not ordinarily exercise them unless satisfied that there is likely to be a failure of justice otherwise. This rule is laid down for England in habeas corpus cases in *In re. Greene* (57. T.L.R. 533) and is indicated for India in *In re. Jewa Nathso* (I.L.R. 44 Cal. 159 at 476). Incidentally both cases show that the power to compel production so that the detenu conduct his case in person is there. In fact the detenu was allowed to do so in each of these cases though the Judges acknowledged later that the orders they made ought not to have been passed as a matter of discretion in those particular cases. But the orders were nevertheless obeyed.

29. That brings me back to the present cases. Is it necessary for the ends of justice to make an order of production here? Now that the full facts have been brought to my notice I think not.

30. In the first place, Madangopal is only a *pro forma* non-applicant. He is the seventh defendant in the case. The case is for partition of joint family properties. It is brought by the wife and minor son of the first defendant. The other defendants, including the seventh, are alienees from the first. The plaintiffs said they were paupers and asked to sue as such. Their prayer was granted. Madangopal was represented in these proceedings by a pleader. The same pleader appeared for four other defendants as well. Two of these other defendants are Madangopal's brothers. One is older than Madangopal. The three brothers are jointly interested in the alienations with which they are concerned. Therefore it is evident that Madangopal's interests are the same as those of his brothers and that they are being adequately protected by them.

31. The revision is against the order allowing the plaintiffs to sue as paupers. On the face of it that does no grave or substantial injury to the other side. But that apart, these three brothers have not challenged the order, only four other defendants have troubled to do so. These defendants (the applicants here) claim no relief against Madangopal. He is only a *pro forma* non-applicant. Therefore, quite apart from all else, there is no need to hear him. That also aside. Madangopal is a pleader. His elder brother is a shopkeeper and they have a counsel, who appeared for them in the lower court, resident in Nagpur. I am satisfied (1) that it is not necessary to hear Madangopal and that this interests cannot be effected if he does not come and (2) that his application to be heard in person was not made in good faith.

32. I therefore review my former ex-parte order — ex parte so far as the Provincial Government is concerned — and reject the application.

88

Item to be reported at the National Defence Council (2.9.43) (extracts)

File No. 35/5/43 -- Home Poll (I)
[NAI]

A. *Examples of Sabotage etc.*

Thus in May, in an attempt -- fortunately unsuccessful -- was made to blow up a railway bridge near Calicut and in Madras with charges of gelignite; the track and a girder were damaged. More serious were a successful attack made by a large armed gang in June of special train on the M. & S.M. Railway in Bombay, carrying pay for railway employees, in which the dacoits succeeded in getting away with about Rs 20,000, and the derailment of a goods train on the same railway the next day, when the engine and 13 wagons capsized. A more recent incident from Bihar was the attack on July 12th by a mob of some 30 persons on the railway station at Bidhupur in the Muzzafarpur District; telegraph wires were cut, the telegraph instruments damaged and papers set on fire. Shouting revolutionary slogans, the mob then passed on to the local post office where they burnt and damaged papers and removed some cash. Two nights later, another post office in the same District looted and burnt by an armed gang of about 25 men.

I am glad to say that there has been a marked decline in the number of bomb outrages. This may be largely attributed to successful police station, particularly in Bombay which was of course most affected by this form of outrage, against the headquarters where the bombs were prepared and the outrages planned. An outstanding incident was the capture by the police in Bombay in the latter half of April of virtually the entire 'Bombay provincial Destruction Centre' which was believed to have been engaged in plotting bomb outrages and other forms of terrorist activities since the beginning of the movement last August.

Attacks on Government servants and on persons who offered assistance to Government during the rebellion have continued. The centre of this form of outrage was formerly Bombay, but the position there, particularly in the Karnatak, has been very considerably improved by a concerted drive against the leaders of the rebellious gangs which were formerly roving this part of the country. Large forces of police and Intelligence officers, assisted by a whole Brigade of the Military, were concentrated in this area and their operations have resulted in the rounding up of a large number of saboteurs. The position in this respect is now worst in Bihar where the Congress underground organisation is perhaps at its most active. Typical incidents are the cutting off of the nose of a chaukidar of a village in the Bhagalpur District of Bihar by a gang of Congress volunteers carrying the Congress flag; an assault on a chaukidar in the Purnea district by a gang of 6 men who bound him and threatened to murder him; and the murder of a Police informer near Thana Bihpur; and the murder of a chaukidari 'panch' also in the Bhagalpur District. On June 19/20th, a large gang raided the house of a postal peon of Banka who had given information to the Police which lead to the arrest of an absconder. During the month of August, a number of reprisals were reported from the Bhagalpur District of Bihar against rural Police and informers, these incidents including the murder of the father of a witness who gave evidence in the disturbances last year, the disappearance of a police informer who has probably been kidnapped, the murder of another informer and of a village chaukidar,

and the Kidnapping of a liquor-shop vendor who is a complainant in one of the dacoity cases arising out of last year's rebellion. The seriousness of these incidents lies of course in the effect they have in deterring other persons from giving evidence to the police, and a difficult situation has not been eased by the release on bail by the Patna High Court of a large number of dangerous rebels who were convicted under the special Criminal Courts Ordinance and whose cases are now pending appeal in the ordinary courts following on the repeal of that ordinance.¹

¹ Last para of this note is in Chapter XVI – Doc. 21

89: Viceroy to the Secretary of State for India

File No. 44/71/43 - Home Poll (I)
[NAI]

*W.D.Dy No. 10247-W.S.
Dated - 2.9.43.*

Telegram Enclav.

Telegram No. 4825 Dated - 2 September 1943.

From - Governor General Defence Deptt., New Delhi.

To - Secretary of State for India, London.

Important

Federal Court pronounced judgment on Tuesday. In common Judgment Varadachariar and Zafrulla held:

(1) That section 3 of Ordinance XIV did not directly amend or repeal any provision of the Defence of India Act and was not so dependent on or connected with section 2 as to be incapable of being given effect to by itself irrespectively of whether section 2 was valid or not.

(2) That section 3 was validly operative at its face value, with the result that orders made in conformity with rule 26 before the commencement of Ordinance XIV could not be challenged.

(3) That it was therefore unnecessary to decide the questions raised with reference to section 2 including the question whether an Ordinance can repeal or amend an Act of the Indian Legislature.

(4) That an order cannot be held to have been made in conformity with rule 26 if it is shown that the Government making the order was not satisfied in the terms of the rule, and that sub-section (2) of section 59 of the Constitution Act precludes the questioning of an order expressed to be an order made or executed in the name of the Governor on the ground that the order was not so made or executed, but that where Indian Legislation required satisfaction as a condition precedent to the making of an order, the questioning of an order so expressed on the ground that the Governor was not satisfied is not precluded.

(5) That in the case of the appeals from the judgments of the Allahabad, Lahore and Madras high Courts dismissing *habeas corpus* applications by the detenus concerned there was nothing to suggest that the Provincial Government was not so satisfied, and that those appeals should therefore be dismissed.

(6) That the making of orders under rule 26 attracts the individual judgment of the Governor; that in the light of sub-clause (a) of clause (43a) of section 3 of the General Clauses Act the reference to the Provincial Government in rule 26 falls to be construed as a reference to the Governor exercising his individual judgment; that in the absence of a delegation under sub-section (5) of section 2 of the Defence of India Act, a Secretariat officer can derive no authority from section 49 or from the rules of business under sub-section (3) of section 59 of the Constitution Act to make orders under rule 26; that the evidence shows that the Governor was not consulted and cannot therefore have been satisfied in the case of any of the orders forming the subject matter of the appeals from the Bengal Government from the decisions of the Calcutta High Court directing in question to be released; that all those orders were bad on this ground; and that all the appeals by the Bengal Government should therefore be rejected.

2. In a separate judgment, the Chief Justice concurred in the majority findings (1) to (5) but dissented from finding (6), holding that the Constitution Act on its true construction does authorize the Provincial Government to deal with the executive business arising out of the administration of the Defence of India Act and Rules, not excepting rule 26, in accordance with the rules of Business made under section 59 (3) and powers conferred by section 49. It was, however, proved by evidence and admitted by the Bengal Government that on the 1st October 1942 a procedural order had been issued to the effect that where the police had made an arrest under rule 129 and recommended the making of an order under rule 26. Such order should be made forthwith as a matter of routine, and that the question whether the continued detention of the person in respect of whom such order had been made was justifiable in the terms of rule 26 should be reserved for early subsequent examination. The Chief Justice distinguishes the cases under appeal according to the orders under rule 26 were made before or after the date of this procedural order and concludes that there are no grounds for impugning the validity of the orders made before that date, but that the orders made after that date must be held to be bad for want of antecedent satisfaction in terms of rule 26 on the part of the authority making the order in the name of the Provincial Government. He would accordingly have accepted the appeals of the Bengal Government in the case of the four persons in respect of whom the orders under rule 26 were made before the 1st October 1942.

3. Orders having been passed in the sense of majority findings (5) and (6), the Court granted the Bengal Government leave to appeal to the Privy Council from the orders dismissing their appeals from the Calcutta High Court.

(Record copy to Defence Department)

Copies to:

P.S.V. (1)

Legislative Dept. (Sir G. Spence) (1)

Home Dept. (Sir R. Tottenham) (1)

Defence Department (2)

90: Secretary, Government of India (Defence) to the Secretary, Government of Bengal

File No. 44/57/43 – Home Poll (I)

[NAI]

W.D.Dy No. 10315 – W.S. Secret

Dated – 3.9.43 Cipher.

Inparaphrased

Telegram XX

Telegram No. 1864

Dated – 3rd September 1943 (1745)

From – Secretary, Defence Department, New Delhi.

To – Secretary to the Government of Bengal, Calcutta.

Immediate

Your telegram 152-W dated 1st September.¹ In majority judgment of Federal Court lengthy discussion of questions relevant to the validity of section 2 concludes as follows. 'The view that we take as to section 3 of the Ordinance makes it unnecessary for us to pronounce decision in respect of section 2.' It follows that it was equally unnecessary for Calcutta High Court to determine validity of section 2, that observations of Calcutta High Court on the subject have now the status merely of *obiter dicta*, and on that question arising again in Calcutta High Court it will fall to be decided as *res integra* but with due regard to the observations of the Federal Court which though inconclusive point strongly to the conclusion that in so far as its prospective operation is concerned section 2 is valid. In the circumstances we consider that resort should be to power conferred by rule 26 as and when required. We realise that orders made under rule 26 after commencement of Ordinance XIV will almost certainly be challenged on ground that section 2 is invalid, but we consider that such challenge ought not to succeed and that there is a reasonable probability that it will not succeed, and we are not prepared to recommend Governor General to promulgate Bartley Ordinance unless and until future resort to rule 26 is successfully challenged.

2. Following lead given in Federal Court judgment we consider that power to make orders under rule 26 should be delegated under sub-section (5) of section 2 to such secretariat officers as may be considered suitable for the purpose.

3. Past orders vitiated on Federal Court ruling by the fact that Governor was not satisfied should be replaced as soon as may be consistently with proper *de novo* consideration in the light of satisfaction requirement of rule 26 by new orders made by a Secretariat officer in pursuance of the delegation suggested in paragraph 2.

4. We would add that even if we had been otherwise prepared to recommend promulgation of Bartley Ordinance we would have regarded it as out of the question to validate orders made after the passing of the manifestly indefensible procedural order of the 1st October 1942.

91: Official Notings — Maxwell disagrees with Cawthorn (Doc. 88) (dt 5.9.1943) (extracts)

File No. 44/57/43 — Home Poll (I)
[NAI]

I think that we should proceed with these proposals for the reasons given in my note of the 18th August¹ out of which they arose, and I accept the Summary as a correct presentation of the stage now reached in the discussions. I agree with Additional Secretary that the military requirements explained in the War Department noting² above should be provided for in some different manner not involving the use of Defence Rule 26 which was clearly not designed for such purposes. I fully recognize the imperative necessity of those requirements, but they cannot be allowed to tie our hands in dealing with Rule 26 in such a manner as considerations of public policy demand. The section of Security Prisoners in which the public (and the Courts) are interested is the class commonly known as 'political' and little question would, I think, arise if powers of a different character were taken to hold suspects arriving from enemy occupied territories.

2. We can, therefore, for the moment consider the matter only from the civil point of view. One difficulty which has been met with in framing concrete proposals has been the doubt whether the outcome would be an Ordinance replacing Rule 26 or merely a series of amendments of that Rule. The judgment of the Federal Court has not wholly removed this doubt, at least so far as Bengal is concerned, and it is still possible that either of these two methods may have to be adopted. In some ways a new Ordinance would be the easier course because (1) it could provide more specifically for its application to persons already under detention and (2) specific restrictions could be included on the power of Provincial Governments to delegate powers of detention to subordinate officers. No mere amendment of Rule 26 would cover this point since it would be repugnant to the Act. Other things being equal, however, I thought that it would be better, if possible, to rely on an amendment of the Rule since this in itself is based on an Act of the Legislature and we do not in any case wish to multiply Ordinances unless they are strictly necessary. I presume, however, that it would be possible to provide in the amended rule that persons previously detained should be entitled to the benefit of the new provisions as though they were persons newly detained.

3. Of the alternative methods of providing for periodical review of cases mentioned at B in para 3 of the Summary I am inclined to prefer the first (my original suggestion) if a new Ordinance is to be issued. But I would accept the second alternative if it is considered more convenient, as may well be the case if the amendment is to be by rule. To my mind, however, the mere option of renewing an order after such consideration as may be necessary, as provided in the first alternative, would be less onerous than a statutory obligation to review cases, since the latter procedure would be more suggestive of lengthy and formal proceedings.

4. One question of importance which occurs to me and on which, I think, we should obtain the best advice before actually drafting is whether a right to make representations conferred either by Ordinance or by amendment of rule on persons detained would be liable to create a demand for the production of such representations. A similar provision in Regulation III of 1818 has not, so far as I am aware, led to any such demand. But cases under this

Regulation would be comparatively few. Similarly I have not heard that the corresponding provision in Regulation 18B of the U.K. Defence Regulations has led to any interference from the High Courts in England. But where a concerted attempt is evident to bring the cases of Security Prisoners in India before the High Courts and where certain High Courts have shown a disposition to lend themselves to these tactics we have to be safeguarded against the possibility that, e.g., representations made by Gandhi or members of the working Committee might be demanded by the Courts for the purpose of deciding whether the person in question was properly detained or not. If there is any such danger we must seek means of placing these representations firmly beyond the reach of any Courts in any circumstances.

5. This case raises important questions of policy arising out of certain dicta of the Calcutta High Court and the Federal Court regarding the proper means by which the liberty of the subject should be safeguarded and I think that before reaching final decisions it would be valuable to have the advice of my Hon'ble Colleague the Law Member both as regards the legal or quasi-legal questions involved and as regards the general propriety of the measures proposed from the point of view of the criticisms that have been uttered. I would, therefore, propose to send these papers to the Hon'ble the Law Member for his opinion on these subjects before finally submitting the case to His Excellency.

R.M. Maxwell,
Home Member,
5.9.43.

Secretary Legislative Dept. . . .
N.D.U.O No 4457/43 - Poll (I)
Notes in Legislative Department.

H.M. may kindly read the Summary and the Hon'ble the Home Member's minute.

2 With regard to paragraph 2 of the minute, attention is invited to the telegram No. 152- W from the Bengal Government dated the 1st September regarding the implications of the Federal Court judgment and the Defence Department reply thereto which I understand was sent in consultation with Secretary (Sir George Spence). While I agree that the observations of the Federal Court point strongly to the conclusion that in so far its prospective operations are concerned, section 2 of Ordinance XIV of 1943 is valid, they point equally strongly to the conclusion that its validity as 'retroactive' law is unlikely to be upheld by the Federal Court. Vide pages 9 and 10 of the typed copy of the judgment. If rule 26 and of orders made thereunder after 27.4.43.

K.V.K. Sundaram
10.9.43

1 Doc 74.

2 Doc 86 - See also Docs on the subject - Docs 79 & 85



92: Official Notings reg. treatment of security prisoners (dt 8.9.43–10.9.43) (extracts)

File No. 44/37/43 – Home Poll (I)

[NAI]

One major point has already arisen out of our correspondence with Provincial Governments regarding the treatment of security prisoners. This is set forth in Mr Olver's note of August 27th¹ as a result of the Bihar Government's letter of August 13th.² I should like to discuss sometime with H.M.

2. Two smaller points have also emerged:

- (1) The grant of personal allowances; and
- (2) The grant of family allowances.

As regards (1), I think we should tell all Provincial Governments that we have no objection to the practice which has already been approved in certain Provinces of providing small monthly allowances for the purchase of miscellaneous articles so long as no cash is allowed to find its way into the hands of the security prisoners themselves.

As regards (2), the Assam Government seems to be in some doubt as to our intentions and I confess that I have never been quite happy about the stricter formula that we have recommended for application in this respect to Congress security prisoners. It would, I think, be better to have a single formula for all and certainly this would be much easier to defend in the Legislature.

3. Pending discussion on these points I have not authorized the issue of the draft letter below to Assam,⁴ but I think we must take a rather stronger line with them over parole releases. I do not think that these should be allowed for the performance of religious ceremonies.

(R. Tottenham)
Secretary, 8.9.43.

I have spoken to H.M. who agrees that we may now inform provinces that we do not regard the separate classification of congress S.Ps as a principle on which uniformity is necessary. The position should be as in para 4 (1) of our letter of July 21st with the modification that, even where separate accommodation for these prisoners is available, we should raise no objection if any particular province wished to classify the prisoners into two classes and give them the treatment appropriate in physical matters to those two classes. The reservation regarding uniformity in the matter of correspondence – see sub-para (7) of para 4 of our letter – would still hold good.

2. H.M. also agreed that we could inform all Provinces if so desired that there would be no objection to some small allowance for sundries, if Provinces wished to adopt that course, provided that no cash found its way into the hands of security prisoners.

3. Finally H.M. agreed that we could also inform provinces that we are no longer convinced that separate and stricter treatment for Congress security prisoners is absolutely necessary in the matter of family allowances. Any Province that desires to maintain a stricter standard will, of course, be at liberty to do so. On the other hand, if any Province finds that the stricter

standard difficult to maintain, it may adopt the slightly more generous procedure laid down for other security prisoners.

4. On the matter of parole for attendance at religious ceremonies, H.M. thinks that we should take a definitely stronger line with the Assam Government, pointing out that *ex hypothesi*, these people have been detained to prevent their acting in a prejudicial manner and that if they are allowed freedom to attend religious ceremonies, the justification for their detention must largely disappear. We should add that so far as we are aware convicted prisoners are not allowed these concessions and therefore we cannot understand how religious susceptibilities could be seriously disturbed if the same rule were applied to security prisoners. I gather that no other Province has raised this difficulty and, if so, this also might be pointed out to the Assam Government.

(R. Tottenham)
Secretary, 10.9.43

- 1 Not printed
- 2 Not printed.
- 3 Not printed

93: Official Notings on legal advice and the right of the detenus to make representation — (dt 10.9.43-22.10.43) (extracts)

File No. 44/32/44 - Home Poll (I)
[NAI]

As regards para 4 of the Hon'ble the Home Member's minute¹ it seems unlikely that a Court will have occasion to call upon the Government to produce a representation made by a detenu under the new provision. Section 16 (1) of the Defence of India Act provides that no order made in exercise of any of the powers conferred by or under the Act shall be called in question. The disposal of a representation made under the new rule being entirely within the discretion of Government to whom the representation is made, the actual contents of the representation should be irrelevant to the proceedings in Courts on a habeas corpus application. But it is impossible to assert that in no circumstances would the Court be entitled to ask for production of these documents, and I suggest that an express provision be included in the new rule to the effect that no public officer shall be compelled to produce in evidence any representation in writing made under the rule or disclose the contents of any such representation, if he considers that the public interest would suffer by the disclosure: cf.s.124 of the Indian Evidence Act, 1872.

K. Sundaram, 10.9.43.

I suggest that Government may go further and concede an Advisory Committee not necessarily on the U.K. model. The Advisory Committee might consist of a high executive officer of

Government sitting with a high judicial officer By a little careful drafting it will be possible to protect the grounds, the proceedings of the Committee being produced in Court in connection with a habeas corpus application or otherwise.

A. Roy, 24.9.43.

As regards clause 11, I would like to have matter further considered. As the clause stands, Courts cannot call for the production by a public officer of the representation, but there is nothing to prevent the detainee from using a copy of the representation in Court or sending it to the prisoners giving it publicity. Either clause 11 should be omitted as being ineffective or made effective by adding a further provision making it penal to publish the representation or the grounds of detention and also making such representation or grounds inadmissible in evidence in a Court of Law.

A. Roy, 19.10.43.

2. Para 3 of the Law Member's note dealing with clause 11 raises two different questions –
- (1) Prevention of use of representation in Court; and
 - (2) Breach of confidence by legal advisers of detained person in giving outside publicity to such representations.

As regards the first requirement it is evident Mr Bartley's draft does not fully cover the requirement stated at the end of para 4 of my note of 5th Sept. (earlier note in the same document) and we should ask for such amendment as will make it fully effective. The second point might conceivably have been met by an addition to the Central Government Security Prisoners' Order, but on the whole I think it better that separate provision should be made to prevent unauthorized publication of representations made by detainees or of the grounds of detention.

R.M. Maxwell, 20.10.43.

3. *Clause 11.* I do not quite understand the effect of the proviso to sub-clause (2). Does this mean that a legal adviser will be at liberty to disclose or publish without the authorization of the Government concerned the contents of the communications, etc., referred to? If not, what is the effect of this proviso?

R.M. Maxwell, 21.10.43.

Notes in Legislative Deptt.

Under clause 11 a legal adviser will be hit if he discloses or publishes the prohibited matter; but without the proviso it would be impossible for a detained person to consult a legal adviser.

J. Bartley, 22.10.43.

94: In reg. K.C. Subbanna's appeal. Mockett and Shahabuddin J.J. (9 September 1943)

AIR, Vol. 31, 1944, Madras, pp. 388-9

Cr. A.No 438 of 1943

dated 8.9.1943.

Mockett J. — This is an appeal against the conviction and sentence of rigorous imprisonment for five years by the learned sessions Judge of Anantapur. The learned Sessions Judge, at the time of the trial, was sitting in his capacity as Special Judge trying an offence under the Defence of India Rules. The accused was charged with an offence under R. 35 (A) (2), Defence of India Rules which reads: 'If any person dishonestly receives or retains, or voluntarily assists in concealing or disposing of or making away with, any sabotaged property, knowing, or having reason to believe, the same to be sabotaged property, he shall be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.' 'Sabotaged property' is defined in R.35 (A) (1) as meaning 'property the possession of which has been transferred by, or in consequence of, any such act as is referred to in sub rule (1) of rule 35'. And sub-rule (1) of R.35 deals with acts of sabotages. The facts are very simple. On 15th August 1942 there is no doubt that a goods train No. 405 was derailed as a result of some person having removed the rails, and there can be no doubt this was an act of sabotage, especially having regard to the conditions then prevailing. Before the learned Special Judge 15 persons were charged with various offences, the gist of which was that they were responsible for the wrecking of the train. They were all acquitted. Against the present appellant there was a charge which reads as follows.

'That you accused 16 between the 15th and the 24th days of August 1942 at Kottala near Guntakal dishonestly received or retained sabotaged property, i.e., the property lost in the goods train de-railed on the night of 15th August 1942, knowing or having reason to believe the same to be sabotaged property and thereby committed an offence punishable under R.35 (A) (2), Defence of India Rules and within my cognizance.' It will be observed that it was not conveyed to the appellant what property he is said to have had in his possession. The conduct of this case was throughout characteristic of the method in which the charge was framed. It appears however that it was at some stage conveyed to the appellant that he was in guilty possession of M.Ss. 5, 10, 4, 3a, 7, 3 and 6. He was acquitted with regard to M.Os. 5, 10, 4, 3a, and 1. But he was found guilty by the learned judge with regard to M.Os. 3 and 6. M.O. 3 consisted of empty gunny bags and M.O. 6. was a bale of 250 empty gunny bags.

Possession being admitted, the prosecution had to prove in the first place that these were sabotage goods. In other words the gunny bags had to be identified. With regard to M.O. 3, the four empty bags, two witnesses P.Ws. 7 and 8 were called. In the course of the evidence of P.W. 7, it was made clear that his firm of Ralli Brothers supplied to sellers fresh gunnies and that these were not fresh gunnies. There was evidence by the same witness that such gunnies were sold to the public and therefore might have been available to the appellant. He stated as follows: 'I cannot say if M.O. 3 was issued to him (a Ready dealer) M.O. 3 bears no marks of any station from and to which the contents are booked. Nor do they bear the owner's name P.W. 8's evidence was to the effect that he could not identify M.O. 3 as among

the lost bags because they had become black. The result of the evidence of these witnesses was that they were not in a position to say that the four empty gunny bags marked M.O. 3 were in the sabotaged train at all. Nevertheless the learned Special Judge, in para 16 of his judgement. Stated as follows. P.W. 7 the Sub-Agent of Ralli Brothers at Guntakkal gives evidence that M.O. 3 four empty gunny bags which bear the letter RFANTU as the bags of the company'. In fact it has never been proved that M.O. 3 were sabotaged goods.

The position with regard to M.O. 6 is as follows. The witness called to identify them P.W. 14, frankly admitted in the witness box that he was unable to do so and so informed the police. The police, instead of summoning from Calcutta persons who might have been in a position to identify these gunny bags the subject of M.O. 6 directed P.W. 14 to enter into correspondence with Calcutta and as a result that correspondence letters were put before the learned judge which satisfied him that M.O. 6 were goods that were on the train that day and therefore sabotaged goods. Apart from the question of admissibility, the documents themselves do not identify the goods. The Mills who are said to have made them expressed the view that they in all probability might be of their manufacture, because bundles of their goods were marked in the same manner in blue ink as M.O. 6. It cannot be put higher than that. But it is obvious that EX. G, series correspondence is not admissible at all. It is hearsay. An examination of the correspondence shows that the most important letter EX. G. 4 is not even from or to P.W. 14. It is a copy of letter said to have been written by the Mengna Jute Mills to Louis Dreyfus and Co., Calcutta. The only way in which the identity of M.O. 6 could be proved was calling a witness to identify them. The procedure adopted in this case with regard to the identification of these goods must be strongly condemned. There is a very special reason. This accused was a dealer in groundnuts and as such was in the habit of having in his possession very large quantities of gunnies. The evidence generally was that many bags circulated, and accordingly it was not an unusual thing for him to have in his possession large quantities of gunny bags. He actually let in evidence to prove that he purchased these very bags, but though he did call witnesses for that purpose who identified the bags as being those sold, the learned judge preferred to reject their evidence and to accept the inadmissible documentary evidence to which we have referred. We cannot help feeling that there was an impression in the Court below that the rules of procedure and evidence did not apply in these cases. Rule 23 of Ordinance 2 of 1942 by implication makes it clear that the rules of evidence apply because it expressly provides for an exception to the rules of evidence in cases coming under S.164, Civil P.C. Apart from that it is obvious that the rules of evidence would ordinarily apply unless expressly abrogated.

The result of this case is that the appellant who protested his innocence and was able to show that he was subscriber to war funds has suffered a long term of imprisonment. The appeal must be allowed. The Public Prosecutor has most properly made no attempt whatever to justify the conviction. We cannot part with the case without expressing regret that the Public Prosecutor of Anantapur placed the case before the Court in the manner in which he did. A prosecution case should never be supported by evidence which is patently inadmissible. Scrupulous fairness should have been shown in a case in which for a sentence of five years no appeal was then provided. The accused is on bail. His bail bond is cancelled. The fine which we understand has been paid will be refunded.



95

Case of Tapas Kumar Basu Mullick

Govt. of Bengal (Home) File No. W586/43
[Bengal State Archives]

Office of the Commissioner of Police,
Special Branch, 14. Lord Sinha Road, Calcutta.
Dated the 10 Sept. 1943.

From
C.E.S. Fairweather, Esq., C.I.E., J.J.,
Commissioner of Police, Calcutta.

To
The 2nd Asst. Secretary to the Government of Bengal,
Home Department.

Sir,
With reference to your Memo No. 10723 Def. dated 4.9.43,¹ forwarding in duplicate signed Government order No. 10729 Def. dated 4.9.43 directing the release of security prisoner Babu Tapash Kumar Basumallik, I have the honour to inform you that the said order was duly made over to the Superintendent, Alipore Central Jail on 6.9.43 for necessary action.

I have the honour to be,
Sir,
Your most obedient servant,
For Commissioner of Police,
Calcutta

¹ Not printed - See Docs 55, 78 and 80

96:

Governor of United Provinces to the Home Member (interrogation of security prisoner)

File No. 44/2/43 - Home Poll (I)
[NAI]

Governor's Camp,
United Provinces.
September 10, 1943.

Secret

My dear Maxwell,
I am afraid that I have never seen any letter emanating from the Home Department which I regard as so dangerous as Tottenham's letter of 30th August¹ regarding 'Police interrogation'.

If that letter leaked out — and most letters do even if marked secret (cf. the Hallett circular!) you would have a very difficult time in the Assembly. I do not deny that interrogation is important from the C.I.D. point of view, in particular it is abundantly clear that the interrogation or investigating officer should have the necessary background; I also agree that it needs specially qualified officers to carry out these duties, in other words we want a well-trained detective staff. Though we consider that on the whole our methods of investigation, though less drastic than those of the Punjab, have yielded equally satisfactory results, yet we have recently agreed to a special interrogation centre in Lucknow, to avoid carrying on the work in jails and lock-ups, and we are by degrees building up a special C.I.D. staff for this work. I admit I agreed to the special centre with some reluctance, it will be a bungalow in Lucknow, not special cells such as apparently exist in the Delhi fort, and on the whole it seemed to me that if my senior C.I.D. officers kept close control over this centre, as they could do, it would be better than interrogation in jails or lock-ups. To that extent I am in agreement with you.

2. But the way in which the views of the Government of India have been given in Tottenham's letter very definitely convey the impression that they approve 'third degree' methods. 'Of course we did not think that the D.I.B. or the Government of India were advocating the old methods of physical torture employed by a sub-inspector in a rural police station. But when we are asked to enforce 'concentration and seclusion' as the ideal psychological conditions under which satisfactory information may be obtained, surely we are being asked to adopt what most people would regard as 'third degree' methods. The views given in Tottenham's letter, in so far as they attempt to define what is meant by 'concentration and seclusion', go further than the D.I.B.'s note and are a great deal more objectionable. Then again it is suggested that this form of scientific interrogation will be useful in the case of ordinary crime. Holding as I do that this form of scientific interrogation involves mental torture and third degree methods, I interpret this as meaning that we must go back to the drastic methods of the old sub-inspector which we have tried our best to eliminate. If these views permeated down to the lower ranks, the danger is obvious.

3. I have no doubt that you are impressed by the Punjab system, but from my knowledge of that system extending over a good many years, I regard it as objectionable, even though it may have achieved some success on some occasions. My C.I.D. officers also do not like it and claim that they have achieved equally good results by less objectionable methods. We appreciate the value of scientific interrogation, that is to say interrogation by an expert officer with full knowledge of the background. But the views of the Government of India as given in Tottenham's letter go a great deal further. We shall of course be only too glad to discuss the whole question with the D.I.B. One of the main question is the extent to which detention in police custody should be allowed. I admit I do not like it; it is contrary to the principle underlying our Criminal Procedure Code and we must only allow it in exceptional cases.

Yours sincerely,

Maurice Hallett

The Hon'ble
Sir Reginald Maxwell,
KCSI, CIE, ICS,
Home Member of Council.

97: Case of one Sailendra Nath Kundu

Govt. of Bengal (Home) File No. W511/43
[Bengal State Archives]

Office of Commissioner of Police
Calcutta

No. TP-666

From
C.E.S. Fairweather, Esq., CIE, IP, JP
Commissioner of Police, Calcutta

To
The Addl. Secretary, Home Department,
Government of Bengal

Dated: 11.9.43

Sir,

I have the honour to state that one Babu Sailendra Nath Kundu s/o Babu Bankim Chandra Kundu of Sujaganj, Dist. Midnapore and of 13/A Bhabanath Sen Street, Calcutta, was served with an order of externment from the town and suburbs of Calcutta, u/r 26 DIR on 29.10.41 with a view to preventing him from acting in any manner prejudicial to public order.

He applied for a short leave to see his ailing mother on 5.8.43. In view of the present state of health of his mother he has however been permitted to come to Calcutta in consultation with D.I.G., C.I.D., I.B. (Bengal). He arrived here on 2.9.43. But in view of the present uncertain position of rule 26 D.I.R. and any action taken thereunder and Govt. notification No. 7689 Def. dated 25.6.43 no formal order could possibly be served on him either suspending the externment order or restraining his movement during his stay in Calcutta. He was simply informed through the S.P. Midnapore that he was allowed to come to Calcutta to attend to his ailing mother for a fortnight.

As no announcement has yet been made since the publication of notification No. 7689 Def. dated 25.6.43, I solicit instructions from Government as to how we can proceed in the matter of externment restrictions and etc. at present.

I have the honour to be,
Sir,
Your most obedient servant,
For Commissioner of Police
Calcutta

Official Comments on the above Question

Letter No. T.P. 666 dated the 11.9.1943, from the C.P. Calcutta

The question of redelegation of powers under D.I.R. 26 to the C.P. Calcutta and to the District

Officers, is under consideration, and a decision is expected to be reached shortly. C.P. may be informed accordingly u/o.

As regards the specific case of Sailendra Kundu C.P. maybe informed that unless the presence of Sailendra in Calcutta is considered to be definitely prejudicial the externment order in operation against him may be withdrawn.

Addl. Secy. may see.

Signed (illegible)
18.9.43

Addl. Secy.

TP 666 dated 26.11.43

Addl. Secy. Home Department

It has since been decided in consultation with D.I.G., C.I.D., I.B. (Bengal) to withdraw the externment order in respect of Babu Sailendra Nath Kundu. Accordingly an order u/r 26 has been issued and forwarded to Addl. Superintendent of Police, Midnapore, for service on the said individual.

J.B. Bhattacharji
for Commissioner of Police

98: Government of Punjab to the Government of India

File No. 3/16/43 – Home Poll (I)

[NAI]

SECRET

No. 5-3087.S.B.

From F.C. Bourne, Esquire, CIE., ICS
Chief Secretary to Government, Punjab

To The Additional Secretary to the Government of India
Home Department, New Delhi

Dated Simla E, the 17th September, 1943

Subject: Interviews between security prisoners and their legal advisers and the production of security prisoners in court.

Memorandum

Reference your secret express letter No. 3/16/43 – Poll (I), dated August the 10th, 1943.¹

I enclose a copy of a rule which is being added to the Punjab Security Prisoners Rules, 1942. It has been considered necessary to maintain the present practice by which security

prisoners detained in Police custody for purposes of interrogation are not allowed interviews with their legal advisers since such interviews would break the continuity of Police interrogation and would reduce the chances of extracting statements of any value to a minimum.

2. The Punjab Government agree that there is no way open of effectively questioning the authority of the High Court to order the production of a security prisoner before it, but consider that of the various alternatives suggested the best is the amendment of sub-section 3 of section 491 of the *C.P.C.* so as to include prisoners detained under rule 26 of the Defence of India Rules.

F.C. Bourne

Chief Secretary to Government, Punjab

The Punjab Security Prisoners Rules, 1942

Rule 20(A)

In addition to the interviews permissible under rules 12-20, a security prisoner may, with the permission of the authority under whose orders the security prisoner is detained, interview his legal adviser in connection with a pending or contemplated legal proceeding before the proceeding is instituted. Not more than one such interview shall ordinarily be allowed in connection with a contemplated legal proceeding before the proceeding is instituted. Applications for interviews from the legal advisers of security prisoners should be preferred to the D.I.G./C.I.D. not less than 10 clear days before the date for which the interview is sought. All such interviews shall take place on the premises in which the security prisoner is confined, shall be limited to an hour's duration and shall take place in the presence of a Police officer not below the rank of Sub-Inspector deputed for the purpose by the D.I.G./C.I.D., in the case of jails in Lahore, and in other cases by the Superintendent of Police of the district concerned. Such Police officers may stop the interview if the conversation turns on any undesirable subject, and shall be responsible for preventing the passing of unauthorized communications unconnected with the case relating to which the interview is granted. The purport of all such interviews shall be reported in writing by the Police Officer present to the D.I.G./C.I.D. After the interview is over, the Police officer present at the interview shall warn both the security prisoner and the visitor that future interviews are liable to be prohibited if the visitor indulges in any publicity on behalf of the security prisoner.

This rule shall not apply to security prisoners detained in Police custody for purposes of interrogation and not charged with any substantive offence.



99: Government of Bombay to the Government of India

File No. 3/16/43 – Home Poll (I)
[NAI]

Home Department (Political)
Poona, 17th September 1943

From
H.V.R. Iengar, Esquire, C.I.E., I.C.S.,
Secretary to the Government of Bombay,
Home Department.

Sir,

I am directed to refer to your letter No. 3/16/43 – Poll (I), dated 10th August 1943,¹ and to the Government of India order No. 44/37/43 – Poll, dated 16th August² 1943, on the subject of allowing security prisoners to interview their legal advisers.

Paragraph 2 of the letter read with paragraph 3 of Defence Department letter No. 5–DC(b)/43, dated 2nd March 1943, lays down that if the intention of a security prisoner is to institute proceedings challenging the detention order, interviews should not be allowed except when the detaining authority is satisfied that the order was defective or invalid. On the other hand sub-paragraph (11) of paragraph 11 of the Central Government Security Prisoners Order, 1942, inter alia, allows a security prisoner with the permission of the authority under whose orders he is detained, to interview his legal advisers 'in connection with a pending or contemplated legal proceeding to which the security prisoner is or will be a party'. This expression is very wide and covers not merely proceedings challenging the validity of detention orders but every kinds of litigation – civil or criminal. It appears to this Government. Scarcely logical refuse access to counsel when a security prisoner wants to challenge his detention order and to allow it in other cases e.g. when he wants to institute money suits or file execution decrees.

The practice of this Government has been to refuse interviews with counsel in all cases and it proposes to adhere to this practice. In order, however, not to embarrass the Government of India, the rule, which is only permissive, has been adopted without change, but it will remain a dead letter.

Your obedient servant

H.V.R. Iengar
Secretary to the Government of Bombay
Home Department

1 Doc. 70.

2 Not printed.



100: Kirti Narain Singh and others Appellants v. Emperor (Varma and Reuben J.J.) (21 September 1943)

AIR, Vol. 31, 1944, Patna, pp. 345-7

Criminal appeal No. 398 of 1943, Decided on 21st September 1943, from decision of Special Judge, Muzaffarpur, dt 17th March 1943.

Prem Lall – for Appellant

C.P. Sinha – for the Crown

Reuben J – The appellants have been convicted by the Special Judge of Muzaffarpur, under Ss.143, 448,149, Penal Code, and Defence of India Rule 56 (4). In respect of the first two convictions, they have been sentenced each to rigorous imprisonment for three years. The sentences of imprisonment have been directed to run concurrently. At the time of his conviction and sentence in this case, the appellant Kirti Narayan Singh was undergoing imprisonment in other cases. The learned Judge has given a direction under S.397, Criminal P.C. that the sentences imposed in this case would also run concurrently with the imprisonment in respect of the previous cases. There were 18 other persons tried along with the three appellants. Nine of them, in addition to the three appellants, were also convicted, two of them were bound down under S.562, Criminal P.C., and the other seven were given substantive sentences. None of them has appealed.

The case arises out of an occurrence which took place on 14th August 1942 at about 1 p.m. at the Shochar police station. On that day at that time a mob of about 400-500 men carrying congress flags came to the police station shouting congress slogans. Some members of the mob were armed with weapons such as small spears, sticks, lathis and dablas. The mob entered the Thana compound some of the members got on the Thana verandah and tore down the notices posted on the Thana walls exhorting people to contribute to war funds. They wrote on the walls with chalk slogans as 'Hindustan Aazad'. Some of the mob posted a Congress flag on the gate of the hajat. Another Congress flag was posted up in the police station compound by fixing it to a pole fixed in the ground. Before the mob arrived, the Sub-Inspector of Police (P.W.I) had locked the Malkhana and the inspection room. One of the members of the mob, Harihar Pande, asked the Sub-Inspector to return the property and papers of the local Congress Office, which had been seized by the Sub-Inspector some time previously. The sub-Inspector told him that the keys are already been sent by him to the District Magistrate and that it was not possible for the Sub-Inspector to return the things. After this a portion of the mob left that place while others remained on guard near the police station watching that no work was done by the police. Work was altogether suspended at the police station from that day till 18th August. On 19th August, under the orders of his superior officers, the Sub-Inspector went with his staff to Sitamarhi where 'concentration camp' had been formed. They reached the concentration camp on the 21st at about 7 p.m.

The first information report (Ex.1) in the case was drawn up by the Sub-Inspector (P.W.I) on 22nd August, after reaching the concentration camp. It contains a list of about 33 names,

including the names of the three appellants. The sub-Inspector tells us that the list was prepared by him on 14th with the help of the local dafadar (P.W.3) who is a witness in the case. Nine witnesses have deposed as eyewitnesses of the present occurrence. P.W.1 is the Sub-Inspector. P.W. 2 is assistant Sub-Inspector P.W.3 is a local dafadar 2. Ws 4, 5, 6 and 7 are police constables, havildar and P.W.9 is a village chaukidar. The main facts alleged are not disputed, and the only question in the case is the usual question which arises in such cases, namely, whether it has been proved to the satisfaction of the Court that these persons were concerned with the offence in question. There is one point, however to be considered before I turn to the individual cases, namely, whether the evidence on the record is sufficient to justify the conviction under Defence of India R.56 (4). An offence under Defence of India Rule 56 (4) is committed by a person who contravenes any order made under this rule. The only evidence upon the record relating the existence of such an order consists of the statement of the Sub-Inspector of Police.

‘The order of the District Magistrate banning processions, meetings and assemblies was proclaimed by beat of drum in my claka before the date of the recent occurrence’.

Obviously, this evidence is insufficient to sustain the conviction. Before a Court can convict under this rule, or uphold a conviction under this rule, it must be satisfied that there was an order lawfully issued under this rule by an officer properly empowered thereto, which order the accused persons were bound to obey. On the statement of the Sub-Inspector as it stands, it is not possible for any Court to come to such a finding. Mr C.P. Sinha for the Crown has pointed out that there was no cross examination upon the point. The absence of cross-examination by the defence relative to this point is not, to my mind, an admission of the existence of such an order. If the prosecution fail to produce evidence which is necessary for the establishment of their case, it is not for the defence to point out the omission to the prosecution. The onus of proving all the essentials necessary to establish the guilt of the accused persons is on the prosecution. If they do not adduce the necessary evidence, the prosecution must fail, and no argument against the accused can be based on the fact that the defence failed to say anything about the commission of necessary evidence on the side of the prosecution. It is true, that the appellant Kishore Parsanna Sinha in his statement under S.342 Criminal P.C., answered in the affirmative the question.

‘Did you contravene the provisions of R.56, Defence of India Rules by taking part in a procession which consisted of about 400-500 men which marched upon the Sheohar Thana on 14th August 1942?’

I would not interpret this answer as an admission of the existence of a lawful order under Defence of India Rule 56. Under the provisions of S.342, Criminal P.C., the Court is empowered for the purpose of enabling the accused to explain any circumstances appearing in the evidence against him, to put such question to him as it considers necessary. Here there was no evidence whatever regarding the existence of a proper order under Defence of India Rule 56. The Court, therefore, in putting this question went beyond its authority, under S.342. There is another way of looking at this matter, namely, that the question, besides mentioning rule 56 of the Defence of India Rules, mentions also the procession of 400-500 men, which marched upon the Sheohar Thana on that date. It would be difficult for a layman to distinguish between the two parts of the question, namely, the one relating to Defence of India Rule 56, and the other relating to the procession which went to the Police-station that day. When, therefore, he replied to this question in the affirmative he may merely have intended to reply to the second part of the question. Whether in fact his act contravened the provision of Rule 56 was not a

matter of the accused to decide, that would be a matter for the Court. Mr Sinha has urged that, in view of the fact that the Sub-Inspector in his evidence refers to the order under Defence of India Rule 56 and there has been no cross-examination on the point the Crown should now be given time to produce the order and to satisfy the Court that there was in fact a lawful order under Defence of India Rule 56. I do not think that at this stage we can allow the Crown to fill in gaps in its evidence. The absence of cross-examination on the point, as I have explained above, makes no difference. The Defence were, in my opinion, well advised not to draw the attention of the Crown to the omission in the trial Court. On the above grounds, I am of the opinion that the conviction under Defence of India Rule 56(4) cannot be supported. This is a finding which affects also the cases of the convicted persons who have not appealed to this Court. *[After considering the cases of the individual accused persons his Lordship held that they were all rightly convicted and proceeded - Ed.]*

The next point that calls for consideration is the question of sentences. These are: six months under S.143 and one year under S.448/149 running concurrently. The offence committed was a serious one. The prosecution witnesses depose that several members of the mob carried dangerous weapons. Fortunately, there does not appear to have been much resistance offered, there might easily have been a much more serious occurrence than actually took place. For several days the work of the police station was at a stand still. In the circumstances the sentences imposed are not, in my opinion, unduly severe. Our attention has been drawn to the note made by the special judge when considering the case of appellant Kirti Narain Singh, that the services rendered by him from time to time to the police during the disturbance would be taken into consideration in awarding punishment. It is pointed out that in spite of this note the same sentence was imposed upon him as upon the other appellants. In view, however, of the order under S.397, Criminal P.C., that the sentence imposed on this appellant should run concurrently with the sentences previously imposed (which sentences according to the statement of the appellant amounted in all to eleven-and-a-half years) the sentence imposed in this case was in effect nil. We are told from the Bar that several appeals have been filed by this appellant and that in all his appeals, which have been decided up to now, he has been successful.

There is now only one appeal left in addition to the appeal with which we are now dealing. I presume, therefore, that most of these sentences which comprise the eleven-and-a-half years, mentioned by the appellant in his statement under S.342, are no longer in force. I see no reason, however, to make any alteration in the sentence imposed by the learned Special Judge in respect of the convictions now under consideration. I would leave these sentences as imposed. I would also leave untouched his order under S.397, Criminal P.C., which may make some difference in view of the appeal which is said to be still undisposed of. On the above grounds I would set aside the conviction and sentence under Defence of India Rule 56(4) against all the appellants. I would affirm the conviction and sentence under Defence of India Rule 56 (4) against the convicted persons who have not appealed to this Court, namely, Rashamohan Gupta, Maharaj Raut, Khenhar Raut, Mathuro Raut, Harihar Pandey, Janki Raut, Sheonandan Kurmi, Jugal Kishore Marwari and Birja Chowdhury. Apart from this, we see no reason to interfere with the convictions and sentence of the other accused persons.

Varma J. I agree,
R.K.

Order accordingly.

101: Law Member's Noting – Reg. Derbyshire's judgement in contempt case¹ (dt 24.9.1943) (extract)

File No. 44/57/43 – Home Poll (I)
[NAI]

The criticism of the Chief Justice of the Calcutta High Court² of Rule 26 D.I.R. in so far as it involves a negation of the principle of '*Audi Alteram Partem*', in contrast with the provisions relating to the Regulation 18(B) under the Emergency Powers Act, 1939, is undoubtedly cogent and reasonable and must be taken to represent the opinion legitimately held by the public. There cannot be any question to my mind that it is the duty of Government to go as far as it is possible to do so to meet this criticism and thus to produce confidence in the mind of the public that even during the stress of War and the paramount necessity created by existing conditions of securing the Defence of the country and of controlling and checking activities subversive of it, they are not unmindful of the importance of providing reasonable safeguards against the undue exercise of the power which they must possess of detaining persons without trial.

As to whether the amendments in the existing Procedure should be by a self contained Ordinance or by an amendment of Rule 26 in exercise of the powers under section 2 of the Defence of India Act read with section 2 of the Ordinance XIV of 1943, there can be no question that had it not been for the uncertain position created by the judgement of the Calcutta High Court regarding the effect of section 2 of Ordinance XIV of 1943, the only right and proper course would be to frame an amended rule under the Defence of India Act. As matters now stand, the Federal Court not having decided one way or the other on the validity of the really substantial portion of Ordinance XIV and with the appeal to the Privy Council pending, much the best course will be not to touch rule 26 but as suggested by Mr Sundaram³ to promulgate a self-contained Ordinance to embody the provisions proposed by my Hon'ble colleague the Home Member. I have not therefore applied my mind to the draft Rules suggested by Mr Sundaram.

3. I suggest that Government may go further and concede an Advisory Committee not necessarily on the U.K. model. The Advisory Committee might consist of a high executive officer of Government sitting with a high judicial officer. The committee should advise on the recorded materials which could include the grounds furnished to the detainee and any representation made by him. By a little careful drafting it will be possible to protect the grounds, the representations, and any proceedings of the Committee being produced in Court in connection with a habeas corpus application or otherwise. The Advisory Committee will deal only with original orders of detention and not with orders extending the period of detention.

4. On the question of delegation referred to in paragraph 4 of the Summary,⁴ I would recommend be noticed that the order of detention of the Regional Commissioner is an *interim* order.

5. I agree that it will be proper to devise appropriate provisions quite independent of Rule

129 and Rule 26 of the Defence of India Rules to meet the problem of enemy agents coming into India.

A. Roy
Law Member
24.9.43

- 1 and 2 Doc. 47 - This Calcutta judgement was referred to as the 'contempt case' because the government officials were held guilty of 'contempt of court' -- Ed.
3 Doc. 91
4 This refers to a minor point in a summary (not printed) of the correspondence on this subject.

102: Official Notings – Regarding case of Radha Kumar Roy (dt 24.9.1943-29.9.1943)

Govt. of Bengal (Home) File No. W563/43
[Bengal State Archives]

Extracts from notes and orders in Home (Jails) Deptt. File No. 6-S/420/43 Re: detention of Babu Banamali Bhattacharjee and Radha Kanta Roy as Security Prisoner)

Letter No. 21630 dt 19.5.43 from the C.P. Calcutta

Radha Kumar Roy, s/o Judisthir:

Case reviewed on presentation by D.S.P., I.B. This is a young Namasudra aged about 24. The only information about him is that he was recruited by a leading R.S.P. member, brought to Calcutta and used to guard premises taken for the party and as a messenger. There is no ground for continuing his detention and he should be released but may appropriately be restricted to his village home in Dacca district. Issue these orders and show the case to H.C.M.

A.E. Porter
24.9.43

Addl. Secy.'s order above. The name of the prisoner was known in C.P. Calcutta's letter No. 21630 dt 19.5.43 as Radha Kanta Roy and detention orders were issued in that name. We are therefore to mention his name as Radha Kanta Roy in the release order.

Draft release orders are put up.¹ The Home (Defence) Deptt. may be requested to put up orders, restricting the prisoner simultaneously.

No family allowance has yet been granted to the prisoner. The report from the D.M. Dacca is awaited.

The file will be shown to H.C.M. after issue of the draft.

G.D. Singh Roy,
28.9.43

1. Not printed.

103: Official Notings – Access to legal advisers for detenus (24.9.43–30.9.43) (extracts)

File No. 3/16/43 Home Poll (I)

[NAI]

The Punjab letter¹ brings up the whole of the difficult question. Whether S.Ps detained under D.I.R. 26 should be kept in police custody for interrogations i.e. beyond the 2 months allowed under D.I.R. 129. We have rather shirked this question of the D.I.R. 129 and I think extracts should now be taken from that file and the point submitted for final orders.

As regards the Bombay letter² I agree that we cannot allow our instructions to remain a 'dead letter' in the manner proposed by the Bombay Govt. We may try the effect of the draft as revised. But if they remain unconvinced I shall have to submit to H.M.

R. Tottenham
24.9.43

On the file regarding custody during police interrogation, which has already been submitted separately, I have suggested that we must recognise the legitimacy of holding people under Defence Rule 26 for interrogation, where this is prolonged beyond the two months period admissible under Rule 129, and that for this purpose certain exemptions from the application of the full Security Prisoner's Order should be granted under para 21 of that Order. It would I think meet the Punjab point if the application of the proposed new sub-rule regarding interviews with legal advisers were also included in this exemption.

S.J.L. Olver
29.9.43

D S.(I)

In other words, while ordinarily the rule about interviews with legal advisers would apply, Govt. would have the power under the exemption provisions corresponding to para 21 of our Security Prisoners order to deny such interviews to selected prisoners, i.e. those of the type who have to be interrogated in the Red Fort.

V. Sahay
30.9.43

The principle of allowing security prisoners to have interviews with their legal advisers for *bona fide* purposes, in addition to the interviews ordinarily allowed under the rules, is giving rise to certain difficulties. In the first place, we have had to make mental reservations regarding the prohibition of such interviews in the case of Congress leaders in the Aga Khan's Palace and at Ahmadnagar, and we have already had to take a somewhat strict line over certain legal business in which more than one of the prisoners in the latter place are concerned. There are, of course, grounds on which we can make a distinction between these leaders and other security prisoners; but there is an obvious loophole for criticism here.

2. In the second place the Punjab Government now wish to make an exception in the case of security prisoners who have been under interrogation in the Lahore Fort. There would, I agree, be grounds for prohibiting legal interviews (except perhaps, where the security prisoner was a defendant or an accused person) during the actual process of interrogation; but the Punjab Government wish to go further and not allow them to see their legal advisers after transfer from the Fort to jail custody. I must say that I do not like this idea. It merely suggests that there is something about the treatment of security prisoners under interrogation in the Fort of which we have reason to be ashamed and which will not bear the light of day. Moreover, these persons cannot be detained indefinitely and if they bring suits of the kind feared by the Punjab Government after their final release and it then becomes known that they were forbidden to have interviews with their legal advisers while in custody, the effect, I should say, would be even more damaging. I would be inclined to inform the Punjab Government that we cannot agree to this proposal but suggest that they would be entitled to make use of the fact that interviews with legal advisers are only to be allowed for *bona fide* purposes – a phrase which would extend to not permitting the ventilation in courts of entirely baseless and frivolous accusations. The matter is, however, one that I should like to discuss with H.M. along with the linked file.

(R. Tottenham)
Secretary, 30.9.43

1 Doc '48
2 Doc '49

104: Government of India to the Government of Bombay

File No. 3/16/43 – Home Poll (I)
[NAI]

Government of India
Home Department

Express Letter

From
Home, New Delhi

To
The Secretary to the Government of Bombay,
Home Department

No. 3/16/43 – Poll (I),

New Delhi, the 25th September, 1943

Your letter No. S.D. VI9669, dated 17th September,¹ 1943. Paragraph 2 of our letter of 10th August² read with paragraph 3 of Defence Department letter No. 5-DC(6)/43, dated 2nd

March,¹ may be open to the interpretation which you have placed upon it; but you have misunderstood our intention. While the general principle holds good that frivolous applications from security prisoners for interviews with their legal advisers are to be discouraged, we feel that principle is largely safeguarded by not allowing more than one interview before proceedings are instituted; and we regard it as important, after duly considering all aspects of the case and especially the practice in the United Kingdom, that persons detained without trial should not, except in special cases and for special reasons, be denied reasonable facilities for obtaining legal advice. Our intention is in fact correctly conveyed in the wording of the new sub-paragraph (11) of paragraph 11 of the Central Government Security Prisoners Order, 1942, which we are fully aware is wider than the formula laid down in the Defence Department letter of 2nd March, but which, in our opinion, would not debar the rejection of an application which was clearly frivolous.

2 In view of our general responsibility for the treatment of persons detained under the Defence of India Rules and directed against any single Provincial Government which consistently rejected all applications for interviews with legal advisers from such persons, we must ask you to reconsider your decision to treat the new rule as a dead letter and see whether you cannot agree to fall into line with the procedure advocated in our letter of August 10th. We shall of course be prepared to accept responsibility for defending any departure from this procedure in the case of certain persons detained at the instance of the Central Government.

Secretary to the Government of India

1. Doc. 99.

2. Doc. 70.

3. Not printed.

105: Official Notings – Maxwell accepts Asoka Roy's point about new ordinance (28.9.1943–30.9.1943) (extracts)

File No. 44/57/43 – Home Poll (I)
[NAI]

Home Department

We must, I think, accept with regret the conclusion arrived at by the Hon'ble the Law Member in para 2 of his minute¹ that the requisite changes should be effected by means of a self-contained Ordinance rather than by amendments of the existing Rule 26. This possibility had always been contemplated and does not affect the substance of our proposals.

2. As regards para 3 of the Hon'ble the Law member's minute,² I would concede in principle that the Advisory Committee procedure is best; but the view adopted by the Home Department (as stated in para 5 of the draft Summary)³ was based on the extreme administrative difficulty of adopting such procedure in India. We experienced similar difficulties in constituting the Reviewing Committees some time ago. A 'high executive officer' who was not immediately

concerned with, or responsible for, the order which had to come before the Advisory Committee would be difficult to find or to define in statutory form. Similarly the definition of 'a high judicial officer' would require care and possibly consultation with High Courts which would delay the promulgation of the proposed Ordinance. It must be remembered that cases to be dealt with by such an Advisory Committee might arise at any time and in any numbers and in this country, where the number of officers available for such purposes is so very limited, we have to be on our guard against creating by statute obligations which it might be very difficult to fulfil. We do not know the composition of the Advisory Committees in the United Kingdom. But both officials and non officials would be more easily obtainable there, and in this country it would be impossible, I fear, to associate non-officials with any such procedure. The point should, of course, be raised explicitly in the Summary for council stating the Hon'ble the Law Member's views. But on the whole we would prefer to be relieved of this obligation.

3. With regard to para 4 of the Hon'ble the Law Member's minute,⁴ I have not the U.K. Regulation available at the moment. But if we are to proceed by Ordinance this model might well be consulted. On the other points affecting delegation, I think we might accept Mr Sundaram's⁵ view and drop suggestions (1) and (3) of para 4 of the draft Summary.⁶ The position, I take it, will be that any order passed by a subordinate authority will be of an interim nature until reported to, and confirmed by, the order of the Government concerned.

4. The draft Summary will now need some revision. Where the recommendations of Home Department are stated in line 6 and onwards of the draft Summary we should explain the reason for preferring to proceed by a self contained Ordinance and then explain the new provisions which it is proposed to incorporate more or less as stated in the draft Summary, but subject to Mr Sundaram's comment on certain points and to what has been said above regarding delegation of powers and Advisory Committee. Of the alternatives suggested at B in para 3 of the draft Summary we may now, I think, in view of the advice of Legislative Department, adhere to the first (see para 3 of my note of 5/9/43).⁷

5. It would undoubtedly facilitate discussion in Council if a draft of the proposed Ordinance could be prepared and appended to the Summary. The Legislative Department, I believe, prefer not to draft until the orders of Council have been obtained on the proposals, but in practice this procedure may lead to delay since drafting may give rise to fresh questions of detail which had not been foreseen when the matter came before Council and would, therefore, require fresh reference to Council. It should not be very difficult to adapt Mr Sundaram's draft notification to take the form of a self contained Ordinance.

Defence Department should, I suppose, be kept in touch with these discussions.

R.M. Maxwell
Home Member, 28.9.43
Secretary

Secretary

I have revised the summary and pass it to legislative Department through defence Department for consideration by the latter of the proposal in para 5 of H.M.'s note.

2. In revising the summary I have departed in two respects from H.M.'s note. In the first place I have explained the proposals themselves in paras 3 and 4 of the summary, before explaining the reasons for preferring to proceed by a self-contained Ordinance. I think this comes in better as para 5. Secondly, I have slightly amended the wording of the first alternative

(which has now been accepted) in para 3B of the original summary (para 3(2) of the revised summary). Instead of the words 'Including any representations that the detained person desires to make', I have substituted 'including any representations that the detained person may have made'. The former version would invite fresh representations every six months and I doubt whether this was really the intention. In any case, it seems to me unnecessary and undesirable.

(R. Tottenham)
Secretary, 30.9.43

1, 2 and 4. Doc. 101.
3. Not printed.
5 and 6. Not printed.
7. Doc. 91.

106: Case of Radha Kanta Roy¹

Govt. of Bengal (Home) File No. W563/43
[Bengal State Archives]

Government of Bengal

The 30th September, 1943

Order

Whereas the Governor is satisfied with respect to the undermentioned person that, with a view to preventing him from acting in any manner prejudicial to the maintenance of public order it is necessary to make this order:

Now, therefore, in exercise of the powers conferred by clauses (d) and (c) of Sub-rule (1) of rule 26 of the Defence of India Rules, the Governor is hereby pleased to direct (i) that without prejudice to any further orders that may be passed by the D.M. Dacca the said undermentioned person shall, reside and remain in the district of Dacca (ii) that if at the time of the service of this order he is residing or remaining outside the district of Dacca he shall, within forty-eight hours of the service of this order, proceed direct to the said district and take up his residence and remain there, and (iii) that he shall keep the District Magistrate Dacca, informed of his actual place of residence in the district of Dacca and every change thereof:

Particulars

Radha Kanta Roy, son of Judisthir Roy, of village Cossipore, P.S. Batualla, district Dacca, and of 203, Maniktola Main Road, Calcutta.

By order etc.
Addl. Secy.

1. Doc. 102.



107: Governor of Bengal to the Viceroy

The Transfer of Power, Vol. IV, Doc. 158

Sir T. Rutherford (Bengal) to the Marquess of Linlithgow
MSS.EUR.F.125/43

Govt. House, Calcutta, 2 October 1943

Dear Lord Linlithgow,

[*Omitted: paras 1-3 dealing with political situation in Bengal and also paras 5 to 12 -- Ed.*]

4. High Court — The less said about this institution as at present constituted the better. I made a personal request to the Chief Justice to issue a direction from the High Court to Judges and Magistrates about the kind of sentences appropriate for convictions of profiteering and disobedience of the Food Control Orders, or to agree to the Local Government doing so. His reply was an attack on the Ministry, and the suggestion that it was sufficient to instruct Public prosecutors. The High Court's criticisms, however, on the Government's methods of dealing with 'etention cases were I consider justifiable, and I have turned down a proposal that we would re-issue a certain delegations [*sic*] to District Magistrates and Sub-divisional Officers of powers under Rule 26 D.I.R. subject to report for review by Government. . . .

Yours sincerely

T.G. Rutherford

108: Official Noting — Regarding the new ordinance¹

(dt 6.10.1943-8.10.1943) (extracts)

File No. 44/57/43 — Home Poll (I)
[NAI]

Legislative Department

I had a discussion with Sir Richard Tottenham regarding para 5 of the draft Summary,² and he has agreed to the omissions indicated therein. Although the validity of restriction orders under rule 26 has not been impugned in the Courts the view taken by the Federal Court as to the validity of that rule and of section 2 of Ordinance XIV of 1943 hits the restriction orders as much as it hits the detention orders and we may as well cover the whole of rule 26 in the proposed new Ordinance.

2. The intention is that the new Ordinance should provide for the continuance of all existing orders under rule 26 and for the application to them of the contemplated new

provisions, and that simultaneously with the promulgation of the Ordinance rule 26 should formally be cancelled. It is realized that a certain number of persons have been ordered to be detained under rule 26 by military authorities for purposes of interrogation etc. (vide para 7 of summary),¹ and the new provisions would equally apply to them, but the period for which they would so apply would not be long as they would be brought under another Ordinance in the near future.

3. We may accordingly concur in the Summary and request the Draftsman to place on file a preliminary draft of the Ordinance as desired by the Home Department. Practically it would be a revised 'Bartley Ordinance'. The draft notification which I had prepared on 10.9.43² might be of some assistance to the Draftsman in indicating present requirements.

K.D.K. Sundaram
6.10.43
Secy.

I have revised the Restriction and Detention Ordinance. If Home Dept. thinks that in its revised form it is suitable for appending to the Summary it will be easy for me to get proof copies made by the press for circulation purposes.

J. Bartley
8.10.43

¹ See earlier Doc. 105

², 3 and 4 Not printed.

109: Madho Saran Singh and others (Appellants) v. Emperor [Iqbal Ahmad, C.J., Allsop and Bajpai J.J. – Full Bench (12 Oct. 1943)]

AIR, Vol. 30, Allahabad, pp. 379-93

Criminal Appeal No. 494 of 1943, Decided on 12th October 1943, from order of Sess. Judge, Ghazipur, dt 19th November, 1942.

Iqbal Ahmad C. J. – After the promulgation of ordinance 19 of 1943 on 6th June 1943, numerous appeals against the decisions of Special judges and Special Magistrates in cases tried by them in accordance with the provisions of Ordinance 2 of 1942, were filed in this court and, in most of the appeals, the validity of ordinance 19 itself was assailed. A number of applications under S.491 Criminal P.C., were also filed and in those applications as well the question of the validity or otherwise of ordinance 19 was directly and specifically in issue. Before these appeals and applications were put for final disposal the question raised formed the subject of debate and discussion in and of decision by the Calcutta, Patna and the Madras High Courts, and the decisions of those courts were by no means uniform. To avoid conflict of judicial opinion in this Court on the question raised, and also with a view to have an authoritative pronouncement for the guidance of the Sessions judges subordinate to this court,

who also have to deal with appeals preferred by persons filed and convicted under ordinance 2, I constituted the present Full Bench.

The circumstances that led to the making and promulgation of ordinance 19 are not, and cannot be a matter of controversy and those circumstances are set out in the judgments of the Calcutta, Patna and the Madras High Courts which will presently be referred to.

[Omitted: Quotation from relevant portions of the Federal Court judgment of 4 June 1943, and from section 3 of Ordinance 19 of 1943 – Ed.]

It was contended on behalf of the appellants that Ordinance 19, and in particular S.3 of that Ordinance, was ultra vires the ordinance-making authority of the Governor-General. This question was first raised before, and decided on 12th July by a Special Bench of the Calcutta High Court consisting of Derbyshire C.J., Khundkar and Sen J.J. in A.I.R. 1942 Cal. 489.¹ All the three Judges delivered separate judgments. Derbyshire C.J., in the course of his judgment, observed that in view of the circumstances under which, and the speed with which, the amending ordinance was passed, it would be unfair to criticise it in the way that a statute might be criticised. The proper course, in my opinion, is to take the Ordinance as a whole and in the light of the surrounding circumstances construe it so as to give effect to what appears to be its proper meaning.

He pointed out that the language of S.3, apart from sub-s. (3) is involved and that in that section words of definite and clear import like 'made and declared lawful and confirmed' as are usually used 'where it is desired to legalize something illegally done in the past' were not used. In this connexion he made reference to various validating Statutes and observed that 'to take away retrospectively' from the convicted persons the right to have their convictions quashed, would require legislation in the clearest possible terms as was done in the validating Statutes set out above – implication or inference is not enough.

He then indicated the anomalies that would arise if the construction of sub-s (1) of S.3 contended for on behalf of the Crown was accepted and summarized his conclusions as follows.

Looking at the Ordinance as a whole, as I think it ought to be looked at, and having regard to what it provides and what it omits to provide, and having regard also to the circumstances in which it was passed, I am of the opinion that the meaning and purpose of S.3 were that sentences already passed should continue to have effect as if they had been passed by a valid court, until under rights therein given to those convicted by the special courts, those sentences could be reviewed or dealt with in appeal under the provisions of Criminal Procedure Code when they should be dealt with according to law. One important feature of that law, declared by the Federal Court on 5th June 1943 . . . was that such sentences were invalid and being based upon convictions in courts which had no legal authority. In my opinion, it is the duty of the proper court which has appellate or revisional jurisdiction in the areas in which these sentences were passed to have those convictions brought up before it and quashed and, further, to direct that the persons concerned would be dealt with according to law in the ordinary courts according to the ordinary process of law. . . .

As I read that judgment of Derbyshire C.J., it appears to me that he did not hold that the Ordinance in question or any part of it was ultra vires the legislative powers of the Governor-General. He, however, held that sub-s. (1) of S.3, of the Ordinance had the effect of validating the trials held under ordinance 2 only up to the time that the matter was taken in appeal or revision or came before the appellate or revisional authority and that, thereafter the conviction and the sentence must be deemed to have been passed by a court that had no jurisdiction

to hold the trial and should, accordingly, be quashed forthwith. Khundkar J., agreed with the judgment of Derbyshire C.J.; Sen J., on the other hand, disagreed with the majority of the judges constituting the Bench and held that S.3 is ultra vires. In the course of his judgment he is reported to have observed as follows.

There is a fundamental difference between a Sovereign and subordinate Legislature. No court can question the validity of a law made by a sovereign Legislature like the Parliament inasmuch as it has unfettered legislative powers. Bodies of persons given legislative powers by Parliament are in a different position – they are subordinate or non-Sovereign Legislatures and as such their Acts may be adjudicated upon by Courts which in a proper case, may declare them to be ultra vires . . . a non- Sovereign Legislature which has made a law which is ultra vires of itself cannot by a subsequent Act declare such law or any part thereof to be intra vires. To permit this would be to permit a Legislature with powers limited by some other authority to enlarge its powers by its own Act without reference to the authority creating it. How if this cannot be done directly, obviously it cannot be done indirectly, by means of drafting or other devices.

The question under consideration then came before the Patna High-Court and was decided on 20th Julv. 1943, by Brough and Sinha J.J., in A.I.R. 1943 page 346.² They formulated the question for decision in the following words. What, if any, is the legal effect of Ordinance 19? Brough J., held that the substance of the Ordinance, that is to say, the execution of the sentences passed by the Special Courts, subject to such modification as may be made on merits on appeal or in review, has been expressed with sufficient clarity to take effect and is not ultra vires, and Sinha J. agreed with this conclusion. The question whether sub-s. (1) of S.3 of ordinance 19 embodies a valid proposition of law was then considered and decided by a Full Bench of the Madras High Court on 10th August 1943 in A.I.R. 1943 Mad. 602.³ The learned Judges had copies of the judgments of the Calcutta and Patna High Court⁴ before them and they dissented from the Calcutta decisions and agreed with the pronouncement of the Patna High Court. In the course of arguments before us the Advocate-General stated that the Bombay High Court and the Chief Court of Sind had agreed with the decisions of the Patna and the Madras High Courts, but the Bombay and the Sind decisions have not so far been reported. It would thus appear that, even though there is conflict of judicial opinion as regards the validity and effect of sub-s. (1) of S.3, the weight of authority at present is in favour of the view that the sub-section is intra vires the legislative powers of the Governor-General and that subject to the rights of appeal and powers of revision given by sub-s. (2), the trial held by the Special Courts must be deemed to have been held in accordance with the code of criminal procedure, 1893 (5 of 1898), by a Session Judge, an Assistant Sessions judge or a Magistrate of the first class respectively, exercising competent jurisdiction under the said code.

In other words, the sentences passed by the special courts cannot be set aside on the ground that those sentences were passed by a court that had no jurisdiction to do so, and the appeals and revisions have to be heard and decided on the merits. That the answer to the question under consideration is beset with considerable difficulties is apparent not only from the fact that the view taken by Sen J. did not find favour with Derbyshire C.J. and Khundkar J. and further that the view taken by all these three eminent judges did not commend itself to the Patna and the Madras High Courts, but also from the fact that there is not even unanimity between the three judges constituting the present Bench and my brother Bajpal J. is disposed to agree with the view taken by Sen J. To say the least the matter is involved in great doubt and that doubt will be set at rest only on an authoritative pronouncement by the Federal Court where, I am given to understand, appeals raising the question under consideration are pending.

In these circumstances if I adopt the one view or the other, it is obvious that I do so with great diffidence and with equal respect to the learned judges from whom I dissent. After giving due weight to the arguments that have been addressed at the Bar, and giving the question my best consideration I am disposed to agree with the decisions of the Patna and the Madras High Courts, and I respectfully adopt the reasons given by the learned judges of those Courts in support of the conclusions arrived at by them. I shall, however, summarize, as briefly as possible, the reasons that have led me to adopt this course

[*Omitted*: An extensive listing of the reasons – not very brief – Ed.]

For the reasons given above I hold that sub-s. (1) of S.3 is valid and operative and that Ordinance 19 is *intra vires* the Ordinance making power of the Governor-General.

Allsop J. – I agree with the conclusions of the learned Chief Justice. As we were referred to a passage in Stubbs' Constitutional History of England on the subject of the distinction between statutes and ordinances, I think it is necessary to point out the danger of the fallacy of equivocation. The term 'Ordinance' in Sch.9, Government of India Act, has not necessarily the same meaning as it has in the passage to which our attention was drawn. It was doubtless used in the schedule in the first instance because an ordinance was to have effect only for a certain period but that limitation has now been withdrawn. It may be, as the learned Judges of the Federal Court have observed, that it is intended that ordinances should be temporary but that is a matter of policy, not of law. It is possibly the intention to have them re-considered at some time by legislative assemblies or councils but they will at no time automatically cease to have effect. They will continue in operation till they are repealed and in that respect they do not differ from any Act or Statue. It is to be remembered too that the promulgation of an Ordinance is not an executive but a legislative action. Government of India Act has given the Governor-General legislative powers in times of emergency and he is the sole judge of the question whether an emergency exists. It may appear wrong to some that legislative functions should be exercised by a single person but it is our duty to construe the Act as it is and not to question the policy upon which it is based. In the circumstances which existed when ordinance 19 of 1943 was made, that Ordinance had the same force as an Act of any legislative body created by the Government of India Act and the Governor-General had the same legislative powers as any such body would have had. As that is so, it seems to me wise in order to avoid the danger of any unrecognized effective influence to test the validity of the ordinance as though it was the Act of a legislative body.

If the Ordinance had been such an Act, I can see no ground on which its validity could have been questioned. There is no provision in the Government of India Act preventing the Legislature from creating Courts of any kind for the trials of criminals or from laying down any procedure which such Courts should follow. The Federal Court held that it was within the competence of the Governor-General to create special courts with their own procedure for the trial of offences of certain types. It found that ordinance 2 of 1942 was defective not in substance but in form, partly because it did not expressly repeal certain sections of the code of Criminal Procedure and partly because it did not itself decide which cases were to go before the special courts. The legislature could have re-enacted ordinance 2 of 1942 after removing these formal defects and there is no question of its attempting to do indirectly what it could not do directly.

If the person designate who presided over the special courts set up by Ordinance 2 of 1942 had no power to try and punish offenders their position was no better or worse than

that of Courts Martial and I can see no reason why the principles laid down in 1907 A.C. 93 should not apply to this case. The fact that these persons happened also in other capacities to preside over regular criminal courts would make no difference. When they dealt with cases under the ordinance, they did not purport to exercise jurisdiction under the code of Criminal Procedure. If they had no jurisdiction under the ordinance, they had no jurisdiction at all, no more jurisdiction than a military officer or anybody else who took it upon himself to try and punish an offender. The fact that Natal has a Sovereign Legislature and India Subordinate Legislatures does not, in my judgment, affect the issue. Except in so far as the powers of the Indian Legislatures are expressly limited by the Government of India Act they are plenary powers as large and of the same nature as those of Parliament itself. There is nothing in the Government of India Act to prevent an Indian Legislature from passing a validating Act of the kind with which their Lordships of the Privy Council were dealing in 1907 A.C. 93.

It was suggested that Ordinance 19 of 1943 did not deal with any subject within the Legislative Lists excepts possibly preventive detention. It certainly does not deal with that subject. It deals with the punishment of criminal offence already committed and I cannot understand how that matter can be excluded from the denotation of criminal law and criminal procedure. We were referred to some remarks made in a treatise on the Constitution of the United States of America which, in my judgment, are not relevant. The powers of Legislature in the United States are limited by the written Constitution of that country which lays down certain fundamental rights. The powers of the Legislatures in India are limited only by the Government of India Act which is in quite different terms and makes no reference to any such rights. I can see no reason for holding that ordinance 19 of 1943 is invalid and difficulties (if any) in applying it would not make it so. I hold that the ordinance is intra vires and that that the sentences passed by the Special Courts are valid till set aside on their merits by an appellate Court.

Bajpai J. — One appeal and four miscellaneous proceedings are listed before us, and it is not necessary for me to state in detail what these five proceedings are, but it is sufficient to say that in each one of them the general effect of the Repealing Ordinance, 19 of 1943, has got to be considered. Prior to this ordinance, ordinance 2 of 1942 had been promulgated by which certain special criminal courts were constituted, and the applicants in the present cases were tried under the above ordinance. Most of the High Courts in India, including this court, had held the special criminal courts ordinance (ordinance 2 of 1942) intra vires, but the Calcutta High Court in A.I.R. 1943 Cal. 285 was of the view that certain sections of the said ordinance were ultra vires, and on 4th June 1943 the Federal Court by a majority affirmed the judgment of the Calcutta High Court. It will be convenient at this stage to state exactly what the Federal Court decided about ordinance 2 of 1942 and I can do no better than quote the views of the majority as put down in the head. Note of (1943) 6 F.L.J.F.C. 79 at page 80.

Under S.292, Government of India Act, 1935, so long as 5, 23 and 29, Criminal P.C., have not been 'altered, repealed or amended by a competent Legislature or other competent authority' those provisions of the Code must govern every criminal proceeding both as regards the tribunal by which a crime is to be tried and so as to the procedure to be followed. The Special Criminal Courts Ordinance, 2 of 1942, has not by itself repealed SS.28 and 29, Criminal P.C. It is only the order of the executive authority passed under S.5, 10 or 16 of the Ordinance, in respect of each case or group or class of cases that in fact operates to repeal those provisions of the Code to divest the regular courts of their jurisdictions and to invest the Special Courts of their jurisdiction and to try any particular case or group or class of cases. Such executive orders cannot in law have any such effect and therefore SS.5, 10 and

16 of the Ordinance are open to objection as having left the exercise of the power thereby conferred on executive officers to their absolute and unrestricted discretion, with any legislative provision or direction laying down the policy or conditions with reference to which the power is to be exercised.

The learned Advocate-General threw a challenge to the counsel for the appellant and the petitioners to show if the Federal Court had anywhere used the word *ultra vires* in connexion with the Repealed Ordinance. It may be conceded that the word '*ultra vires*' has not been used by the learned judges of the Federal Court, but this is only a verbal difference. There cannot be the slightest doubt that their lordships arrived at certain definite conclusions on the main grounds of attack against the validity of the Ordinance, and a perusal of those grounds makes it abundantly clear that Ss.5, 10 and 16 of the Repealed Ordinance were open to grave objections. From the point of view of the Government a serious situation was brought into existence, for thousands of people had been convicted throughout the length and breadth of British India under the Special Criminal Courts Ordinance and were undergoing terms of imprisonment and had paid fines. The genesis of the Repealing Ordinance (No. 19 of 1943) is, therefore, fairly obvious; and it is set out in the latter ordinance that whereas an emergency had arisen which made it necessary to repeal the Special Criminal Courts Ordinance, 1942 (2 of 1942) and to provide for certain matters in connection with such repeal, the Governor-general was pleased to make and promulgate the Repealing Ordinance, in exercise of the powers conferred by S.72, Government of India Act 1935 (26 Geo. V, C.2). I shall have myself to consider the five provisions of the Repealing Ordinance later on. At present I may say at once that the High Courts of Madras, Patna and Bombay have held that the effect of the Repealing Ordinance is to validate the trials and sentences passed under the special Criminal Courts Ordinance, and the Calcutta High Court has held that no such result is achieved.

The Repealing Ordinance consists of five sections. The first section says that the Ordinance may be called the Special Criminal Courts (Repeal) Ordinance 1943, and shall come into force at once. The second section says that the Special Criminal Courts Ordinance, 1942 (hereinafter referred to as the said ordinance) is hereby repealed. The third section which deals with confirmation and continuance, subject to appeal, of sentence, says in effect that a sentence passed by the Special Courts shall continue to have effect as if the trial at which it was passed had been held in accordance with the code of Criminal Procedure, 1898, and notwithstanding anything contained in any other law any such sentence shall be subject to such rights of appeal as would have accrued and to such powers of revision as would have been exercisable under the said code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance. The fourth section says that where the trial of any case pending before a court constituted under the said Ordinance has not concluded before the date of the commencement of this Ordinance the proceedings of such Court in the case shall be void, and the case shall be deemed to be transferred to certain other courts who will enquire into or try the case in accordance with the code of Criminal Procedure, 1898. The fifth section provides for indemnity in the cases of servants of the Crown for passing any sentence under the said Ordinance or for carrying out any sentence passed by the Special Criminal Courts. It might be made clear that wherever the words '*the said Ordinance*' are used, the reference is to the Special Criminal Court Ordinance, and wherever the words '*this ordinance*' are used the reference is to the Repealing Ordinance.

The decision in Benoi Lal Sarma's case was given by the Calcutta High Court, on 21st April 1943, and the decision by the Federal Court in the same case given on 4th June 1943. The Repealing Ordinance came into force on 5th June 1943. The Government must, therefore

be deemed to have been on their guard ever since 21st April 1943, and I cannot, therefore, assume that the Repealing Ordinance was enacted in a hurry and therefore, it should be construed in a spirit favourable to the Crown. All penal enactments, as a rule are interpreted in an atmosphere free from all bias and, if necessary, where there is an ambiguity, in favour of the subject. There is a slight difference between ordinary legislation and legislation by ordinance. Stubbs in his book on Constitutional History of England, Vol. II, p. 615, points out the difference between an ordinary statute and an ordinance in the following passage which might be quoted with advantage:

... The statute claims perpetuity: it pretends to the sacred character of law, and is not supposed to have been admitted to the statute roll except in the full belief that it is established for ever. The ordinance is rather a tentative act which, if it be insufficient to secure its object or if it operates mischievously, may be easily recalled, and if it be successful, may by a subsequent act be made a statute . . . the fundamental distinction appears to lie far deeper than anything here stated, while in actual use the statute and the ordinance come more closely together. The statute is primarily a legislative act, the ordinance is primarily an executive one.

And the Federal Court in *Benoari Lall's case*⁵ has said:

'Though legislation by ordinance has been given the same effect as ordinary legislation and the ambit as to the subject-matter is the same in both cases, there are two fundamental points of difference. One is that by the very terms of S.72 of Sch. 9, Constitution Act, the operation of the ordinance is limited to a period of 6 months (and even now it is only temporary, though the particular limit has been removed), and secondly, it is avowedly the exercise of a special power intended to meet an emergency. These two circumstances differentiating legislation by Ordinance from normal legislation afford ground for doubting the applicability of the principle of *Burah's case* to ordinance. Further, it is only consistent with the special character of this kind of law-making that the responsibility for it should have been laid on the Governor-General whose personal judgment and discretion must be taken to be a very important factor. It may be that his position cannot be described as that of an 'agent' or 'delegate', but the very conception underlying the ordinance-making power so connects it with the personal judgment and discretion of the Governor-General that the objection against delegation to subordinate executive authorities of any matter of principle is even more serious in this case. (Head — note of (1943) 6 F.L.J. 71 at p. 81).

This is perhaps not a matter of great importance for it may be conceded that under S.72 of sch.9, Constitution Act, the Governor-General can promulgate ordinance within the ambit of his power and the ordinance will have the same effect as an ordinary law, but its temporary character has to be borne in mind. It may be said that all legislation in a sense is temporary, but this is not quite accurate. It is true that legislation can be repealed and then its force is lost, but an ordinance by its very nature is temporary for it is limited to the period of emergency which has come into existence and an emergency is in its character more or less, ephemeral.

Validating Acts are not unknown to law, and Derbyshire, C.J., in A.I.R. 1943 Cal. 489 has mentioned some of the Validating Acts. Broadly speaking, the Validating Acts are of two kinds. (1) Where it is intended to validate an act done by another person when that person had no power to do that act, provided the lack of power in that person does not arise from any want of legislative power in the authority seeking to validate it. In the former case, the validation will be all right, but in the latter case, according to my view, the validation will be futile, as it will be an attempt to exercise a power which ex hypothesi did not exist. In the

statutes referred to by the learned Advocate-General the defect in the Acts sought to be validated did not proceed from any want of power in the legislature validating those Acts; but where, for example a particular Legislature has no power to legislate with respect to persons and things beyond a certain territory but erroneously passes an Act which affects such persons and things and attempts to bring about certain rural relation, then upon the discovery of the mistake and after knowledge that the Legislative Act was void, it would not be open to the same Legislature to declare that the Act was a valid one, because that would amount to a repetition of the same mistake. Legitimate legislative devices are well-known, but the present legislation, to my mind, is not amongst those legislative devices. By S.5 of this Ordinance indemnity is granted clearly for acts done under the Special Criminal Courts Ordinance, and by S.4 it is clearly provided that where the trial of cases pending before the Special Criminal Courts has not concluded at the date of the commencement of the Repealing Ordinance the proceedings of the Special Criminal Courts shall be void; but I do not think that the sentences passed by the Special Criminal Courts in concluded trials have been legalized. In this matter S.9 and the general effect of the Repealing Ordinance — its pith and substance — has got to be considered. The general effect may be said to be the repeal of the Special Criminal Courts and the provisions of S.4 and the result of the Federal Court decision make it quite clear that the trials by the Special Criminal Courts are absolutely void. Is it possible then to argue that although the trials were held by the Special Criminal Courts not invested with proper jurisdiction, the sentences passed by them would be justified? It might be argued that all that matters between the subject and the Crown is the sentence for all practical purposes, but with all respect I make bold to assert that the trial and a valid trial also is of great importance. As has so often been said, 'Justice should not only be done but should appear to be done' and the appearance of justice, and even the semblance of it, can be obtained only when the trial is regular. The Special Criminal Courts are repealed and yet their sentences are said to be operative. The trials are rendered void, the process through which the sentence has been passed is without jurisdiction and yet it is laid that the sentence or, in other words, the punishment is effective. Ordinance 19 of 1943 validates sentences passed under ordinance 2 of 1942, and this is endeavoured to be done by the employment of fiction. As regards the meaning of the expression 'deemed to have been' employed in sub-cl. (3) of S.3, the observations of their Lordships of the Privy Council in 1930 A.I.J. 73, are pertinent and they are as follows. 'Now when a person is deemed to be something, the only meaning possible is that whereas he is not in reality that something the Act of Parliament requires him to be treated as if he were'.

By the use of legal fiction, the sentences which were nullities are revived and treated as sentences passed by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the first class. Legal fiction is a 'portent contrivance', and S.537, Criminal P.C., is very often utilized for curing certain errors, omissions and irregularities, but under cover of legal fiction death sentences cannot be resurrected. The Repealing Ordinance operates on sentences which came into existence before the ordinance was passed, and Ordinance 2 of 1942 and the sentences passed under it are dead. But if an authority has no power to bring about a certain result directly, it cannot bring about the same result indirectly by the employment of a fiction. Ordinance 2 of 1942 created courts but did not invest them with jurisdiction over any class of cases or persons but left it to the executive to invest those courts with the requisite jurisdiction, and this the Governor-General had no power to do under the constitution Act. The result was that all proceedings before such courts were *ultra vires*, and the sentences

and convictions were nullities and did not exist in the eye of law. By ordinance 19 of 1943, the same sentences passed by the same courts which were not properly invested with jurisdiction are validated by the employment of a 'colourable device'. And in substance and in truth the Governor-General says in effects:

'Although I have not properly invested the Special Courts with jurisdiction, although the proceeding before such courts were nullities and although the convictions were therefore void, yet without bringing into existence Special Court with jurisdictions validly conferred, I declare and say that those sentences passed by those courts are valid and should be treated as sentences passed by other courts which are already in existence.'

If this in fact is the result of the new legislation, then is not the Governor-General usurping judicial powers and is it not in effect and substance as if he himself is passing the sentences? And I believe it is firmly established that the executive cannot usurp the functions of a court and pass a sentence. So far as the powers of the legislature are concerned, there is only one provision that I know of which can legislate in this direction, and that is provided for in List 2, and the Legislature can pass a law regulating 'preventive detention for reasons connected with the maintenance of public order; persons subjected to such detention' (List 2, No. 1); but this is a different thing from passing a sentence. The sentences, according to the Repealing Ordinance, still stand firmly rooted in a jurisdiction which, it is insisted, is good, although as a result of the Federal court decision they stand rooted in proceedings taken by Special Criminal Courts which had not been invested with jurisdiction properly. Speaking about the validity of the sentence I feel inclined, though not in a spirit of levity, to quote what Tennyson said about Lancelot:

'His honour rooted in dishonour stood.
and faith unfaithful kept him falsely true.'

There is a distinction between Sovereign legislation and subordinate legislation. Legislation by Parliament is a Sovereign legislation and legislation by the Governor-General or the Central Legislature or the Provincial Legislature is a subordinate legislation. The Constitution Act, namely the Government of India Act, 1935, 'is enacted by the King's most Excellent Majesty, by and with the advice and consent of the Lords Spiritual and Temporal, and Commons, in this present Parliament assembled, and by the authority of the same; and no Court in India or in England can question the validity of anything contained in the Constitution Act. The same, however, can not be said of an Act passed by the central Legislature or an Ordinance promulgated by the Governor-General. A subordinate Legislature has limitations upon its law-making powers. It can legislate only in respect to matters over which it has jurisdiction and Courts can declare (as indeed the Federal court has declared certain provisions of the Special Criminal Courts Ordinance *ultra vires*) that in certain respects the sub-ordinate legislature has exceeded its powers. As Sen J., observes in A.I.R. 1943 Cal. 489 at page 505:

It follows from this that non-Sovereign legislature which has made a law which is *ultra vires* of itself cannot by a subsequent act declare such law or any part thereof to be *intra vires*. To permit this would be to permit a Legislature with powers limited by some authority to enlarge its powers by its own act without reference to the authority creating it. Now if this cannot be done directly, obviously it cannot be done indirectly by means of drafting or other devices.

Section 72 of Sch. 9, Government of India Act, cannot be questioned because it is the result of sovereign legislation, but the provisions of the Ordinance (being promulgated by the

Governor-General who is subordinate to parliament) can be scrutinized and in proper cases can be declared ultra vires where they are beyond the powers conferred by the Constitution Act.

It is said on behalf of the Crown that certain rights of appeal against the sentences have been provided in S.3 (2) of the Ordinance and they are sufficient safeguards, but it must be conceded that the validity of cl. (1) of S.3 is to be determined by that clause alone and not by a reference to clause (2). But I am of the opinion that this right of appeal is, more or less, illusory. A notional trial has come into existence and the trial by a Special Judge is deemed to be a trial by a Session Judge and one by a Special Magistrate by an Assistant Sessions Judge and one by a Summary Court by a Magistrate of the first class, and it is provided that the prior trials should be deemed to have been conducted by a sessions judge, an Assistant Session Judge and a Magistrate of the first class respectively exercising competent jurisdiction under the Code of Criminal Procedure. Now under the Criminal Procedure Code Sessions Judges and Assistant Sessions Judges conduct their trials with the help of a jury or with the help of assessors. Under S.418, Criminal P.C., in trials by jury appeals lie only on questions of law. If therefore regard is paid to the provisions of cl. (2) question of fact cannot be agitated in connection with those offences where the trial by the Session Judge and the Assistant Sessions Judge in respect to a particular offence would, under the law, have to be conducted with the help of a jury. Where previous trials were held by a Summary Court, the convicted persons will have a right of appeal on questions of fact, but as the repealed Ordinance had special rules of evidence and special rules of procedure it will not be open to the appellants to show that certain procedure provided by the Criminal Procedure code was violated and certain rules of evidence enunciated in the Evidences Act were not followed. Apart from that, the pith and substance of the Repealing Ordinance is that the former proceedings are rendered void and it will be necessary for the appellate Court to look into those void proceedings and to try and administer justice within a narrow compass. I do not, therefore, think that the right of appeal is, in any sense, a valuable right.

I shall now discuss some of the important cases which have a bearing on the point under consideration.

[*Omitted:* References to more than a dozen cases, from the legal history of British India, Canada, and the Union of South Africa – Ed.]

. . . The principles laid down in these cases are applicable to the point under discussion in the present cases, and I hold the view that the sentences passed by the Special Criminal Courts under Ordinance 2 of 1942 must be quashed.

Appeal dismissed.

V.B.B.

- 1 Doc. 45.
- 2 Doc. 50
- 3 Docs 47 and 50.
- 4 Doc. 71
- 5 Doc. 34.



110: Official Notings regarding new ordinance (dt 19.10.1943) (extracts)

File No. 44/57/43 – Home Poll (I)

[NAI]

H.M. 112

44/57/43 – Poll (I)

Official Notings

1. In paragraph 3 of my note dated 24.9.43,¹ when I said that the Advisory Committee might consist of a high executive officer of Government sitting with a high judicial officer, I intended that the Committee should consist of specific officers falling within certain categories. I did not intend that the words 'high executive officer' or 'high judicial officer' should be used in the Ordinance. My idea is that the Central Government and each of the Provincial Governments should have an Advisory Committee. In the case of the Central Government, the Advisory Committee might consist of, say, the Secretary or the Joint Secretary of the Legislative Department and the District Judge of Delhi or any District Judge of 10 years', standing. In the case of a Provincial Government, the committee might consist of, say, the Judicial Secy. and a District Judge of 10 years; standing.

2. As regards the draft Ordinance itself, I would prefer that the proviso to clause 6 (1) should be omitted. I do not think the proviso is really necessary. The substantive provision merely enacts that the orders of detention should not be capable of being challenged on one particular ground. If there are other valid grounds of challenge they would be available to the detainee without the help of the proviso.

3. As regards clause 11, I would like to have the matter further considered. As the clause stands, courts cannot call for the production by a public officer of the representation, but there is, nothing to prevent the detainee from using a copy of the representation in court or sending it to the Press or giving it publicity. Either clause 11 should be omitted as being ineffective or made effective by adding a further provision making it penal to publish the representation or the grounds of detention and also making such representation or grounds inadmissible in evidence in a Court of Law.

4. As regards the Preamble, I am inclined to prefer the old one, but would like to have it added to in order to bring out that the object of the grounds of detention and to put a limit to the duration of such detention.

5. Rule 26 should remain in the Statute Book, though possibly as a dead letter, till the question of *vires* is decided by the Privy Council. The cancellation of the Rule now may mean that the Privy Council will refuse to adjudicate on the validity of a Rule which is no longer in force.

A. R(oy)
Law Member
19.10.43.

Home Dept. (Sir R. Tottenham)

1. Doc. 101.

111. Official Notings – Economic warfare against the Congress (dt 21.10.1943 to 26.10.1943) (extracts)

File No. 3/17/43 – Home Poll (I)

[NAI]

We could issue a fairly convincing and rather cutting reply to the C.B.R.'s memo.¹ I do not think we need, in any case, delay the issue of our letter until we have C.B.R.'s final views and I would be inclined to delay our reply to C.B.R.'s memo until we have issued our draft and to present them with a fait accompli.

(S.J.L. Olver)
Under Secretary

This memo needs no reply. The CBR have only made some debating points and do not (as I read their letter) object to the principle. The suggestion in para 7 of their memo will do. When we issue our letter, we shall endorse it to C.B.R. for action as in para 7 of their memo.

V. Sahay
16.10.43

We had better consult L.D.
Signed. S.J.L. Olver, 18.10.43
Under Secretary

Legislative Department
H.D. 3/17/43

This Department does not appear to have seen these papers hitherto, and I must observe that the legal aspect is wider than that discussed in the present p.u.c. The fact that the reasons for refusing a licence are in certain cases expressly required to be recorded in writing is relevant only in that this requirement inevitably facilitates the public disclosure of the policy.

2. I assume at the onset that it is not contemplated to give this policy legislative sanction, and in the absence of such sanction the wide range of the policy envisaged in the draft letter² will, I fear, have to be whittled down in one, if not two, directions before it will find any support in the courts.

3. A policy based on the refusal of licences definable as those 'which may be expected to be a source of profit to their possessors' would, I have no doubt at all, come in for rough treatment by the courts, and would, I suspect, prejudice those cases where licences may legitimately be refused by reason of the applicant's anti-Government activities. It will not suffice, as Mr Olver in his note of 23.7.43 would do, to take a stand on a literal reading of words, and rely on the use of 'may' as opposed to 'shall'. There is ample judicial authority that the use of 'may' may, and often does not, imply an unfettered discretion, and that it may in certain contexts be indistinguishable from 'shall'. (Page 143 of Mr Bartley's edition of the General Clauses Act may be seen in this connection.)

4. According to Crazies 'On Statute Law' (4th Edn, Page 250) – 'In deciding what may

be done under statutory powers Courts of law will always take into consideration the objects for which the statutory powers have been conferred.'

And later (at page 252) in discussing a case where a public company was given power by the legislature to acquire land, judicial authority is cited for the view that —

It is not sufficient for the company to make a mere statement that the proses for which they are about to exercise their power . . . are within the contemplation of the Act; they must do more than this, they must be prepared with satisfactory evidence to prove this to a court of justice if they are called upon to do so.

5. There can be no doubt that the courts would entertain a declaratory suit brought against a refusal to grant a licence on the contemplated grounds, or that they would apply the principles embodied in the two quotations above to the exercise of statutory powers by authorities of Government. These two principles may be briefly put in the form — (i) the use of the power must be relevant to the purposes of the enabling law; and (ii) the onus of showing that the use complies with (i) is upon the authority using the power. I am convinced therefore that the Courts would hold as *ultra vires* action implementing a policy which does not rest on the first of these principles, but in fact ignores it and is aimed at hitting the pocket, and perhaps the livelihood, of the individual.

6. But I do think that the contemplated action can be taken in respect of certain licences, i.e. those where the individual's anti-Government activities are relevant to the purpose of licensing: in which particular cases can be judged only with reference to that purpose. To consider some examples, I do not think that much exception can be taken to the Madras policy within the limits to which it was confined in G.O. No. 387 dated 17.2.43,⁵ that is, in relation to licences in respect of arms, explosives and poisons (though I am extremely doubtful about the last), or more generally to any refusal in respect of which the reason indicated in the last sentence of para 5¹ of that order can be given without mental reservation. Petroleum in my view is a borderline case: the rationale of the licensing of this substance is that it is dangerous to life and property when not handled and stored with proper caution. But it is also a recognised weapon of the 'fire-bug', and as such I think there is some justification for withholding the authority to possess it in quantities from persons in touch with revolutionary activities. But surely the borderline is definitely crossed when we come to licences under the Cinematograph Act, and emphatically so with stamp vendors' Licences, excise and salt licences and the like.

7. The grant of mining concessions and leases of land are perhaps on a different footing and not governed by principle (i). Here government is functioning not so much *qua* Government in its executive capacity as *qua* owner of property or property rights, and may as such legitimately decide by any criteria it chooses with whom it will deal.

8. The above indicates the major direction in which I think that the contemplated policy will need to be modified before it could hope to survive challenge in the Courts. A lesser point is that the recent trend of cases in the courts would seem to disclose a judicial dislike for the criterion of 'suspicion' or even 'reasonable suspicion'. Under principle (ii) the court will throw the onus on the Government authority of justifying his proper exercise of power, and this being so, there would seem to be no narrowing of scope in adopting the less debatable Madras formula 'known supporters of the Congress.'

[H.D. Benjamin]
A.D.S. 22.10.43

I agree generally with Mr Benjamin. I.L.R. 42 Bom. 259 at p. 279 *et seq* is direct authority for

the proposition that the mere expression of a statutory provision for the issue of licences in terms of 'may' does not operate to vest the licensing authority with absolute discretion to grant or withhold a licence at pleasure. In the light of that case and of more general principles, I apprehend that the courts, if moved in this behalf by the aggrieved party, would intervene to overrule a refusal of a licence in pursuance of the policy enunciated in the draft letter, unless it could be shown either (1) that the statutory provisions applicable to the relevant licences were so drawn as to vest the licensing authority with absolute discretion to grant or refuse the same, or (2) that the ground of refusal (paragraphs 2 and 3 of the draft letter) was within the scope and objects of the enactment imposing the licence requirement.

[G.H. Spence]
Secy. 23.10.43
[A.K. R(oy) H.M.]
26.10.43

1, 2 and 3 See Doc. 87 in Chapter I – Sect. B

4 See Doc. 84 in Chapter I – Sect. B

5 Doc. 18 in *ibid*

112: Official Notings – K.Y. Bhandarkar informing dates of cases fixed for hearing (extracts)

File No. 25/6/43 – Home Poll (I)

[NAI]

Notes from the Defence Dept.:

Notices have been served on the Central Govt. in case of Talpade's latest appeal to the Federal Court and application of the Bombay Govt. for leave to appeal to the Privy Council against the earlier judgement of the Federal Court in the same matter.¹ Both these are fixed for hearing on the 1st November . . . Talpade is not withdrawing his appeal though released. . . .

3. As regards item III the Central Govt. has received notices of 8 appeals to the Federal Court from judgement of the Patna High Court, of 4 appeals from those of Nagpur High Court and one of from that of the Allahabad High Court. One more notice of appeal from a decision of the Madras High Court will be shortly issued. These appeals are fixed for hearing early in November, some on the 2nd and other on the 8th.

K.Y. Bhandarkar
21.10.43

Notes in the Legislative Dept. Solicitor's Branch:

. . . judgement pronounced by the Federal Court on 1st Dec. '43 in favour of the validity of the Ordinance No. XIX of 1943.

. . . the record of the Federal Court in Benori Lal Sarma's case² is being printed and

despatched to the Privy council . . . the record of the Federal Court in Shibnath Banerji's¹ case (re. Ord. XIV of 1943), is being printed. . . .

K.Y. Bhandarkar
10.12.43
Asstt. Solicitor

Home Poll (I) File No. 25/6/43.

Subject: *Statement of cases involving the validity of Ordinances.*²

In all 19 Appeals were heard together from decisions of Patna, Nagpur, Madras and Allahabad High Courts. These decisions were all in favour of the validity of the Ordinance. The judgement of the Federal Court was pronounced on 1st Dec. 1943. Ordinance XIX of 1943 was held valid. On merits Appeals were in some cases allowed but in most of the cases the Appeals were dismissed.

Ground on which decision is based.

1. The Ordinance is within the legislative powers of the Governor General.
2. The language of section 3 (1) of the Ordinance is intended to meet the requirements insisted upon in the previous decision of the Federal Court in Benoari Lal Sarma's case and should be given full effect.
3. Section 3(1) confers validity and full effectiveness on sentences passed by the special courts functioning under Ordinance II of 1942.

¹ See Doc. 27.

² Docs 34 and 255.

³ Docs 33 and 82.

⁴ Doc 76.

113: Government of Punjab to the Government of India — Treatment of Security Prisoners

File No. 3/16/43 – Home Poll (I)
[NAI]

D.O. No. 5172. A.D.S.B.
Punjab Civil Secretariat,

128

Lahore, dated the 23rd October, 1943.

My dear Tottenham

Will you please refer to your most secret demi official letter No. 3.16/43 – Political (I), dated October the 9th, 1943,¹ regarding interviews between security prisoners who have ben under interrogation and their legal advisers?

2. I am desired to say that the Punjab Government admit the force of your objections to

denying security prisoners all interviews with their legal advisers after their removal to jail custody, and are, therefore, now introducing the rule, a copy of which was forwarded with my secret memorandum No. 3087-A.S.B., dated September the 17th/20th,² 1943.

3. As stated in my demi official letter No. 165-N of September the 23rd, 1943,³ the Punjab Government do not believe that security prisoners and others held in the Lahore Fort for interrogation are tortured or maltreated. Such methods would be merely short cuts to the extraction of statements but not to the extraction of truth, and it will, I think be admitted that the statements recorded in the Fort at Lahore have proved to be remarkably reliable and straightforward statements of fact and surprisingly free from the false admissions which torture might be expected to extort. We do not believe that such statements could have been obtained by inhuman treatment. At the same time, it is obvious that no suspect can be expected to incriminate himself and his associates unless considerable pressure is exerted on him. The actual methods of interrogation naturally vary with the psychology of each individual, but the main factors governing success in interrogation are an intimate knowledge of the suspect's background and antecedents, patience, perseverance and concentration, skill in handling men and detailed questioning. In other words, our interrogating officers do no more than pit their brains, knowledge and determination against those of the persons whom they are interrogating.

4. The Punjab Government are not surprised to learn that certain quarters are not altogether prepared to accept the assurance given that Punjab methods of interrogation do not involve inhuman treatment, as they have reason to believe that the successes in interrogation obtained in the Punjab in recent years have led to some resentment at the exposure of the failure of some Provinces to use interrogation as an aid to intelligence. That we have nothing to conceal should be apparent from a recent offer made by Wace to Jenkin that Special Branch officers from other Provinces should be asked to collaborate with Punjab Criminal Investigation Department officers in the interrogation of suspects belonging to their Provinces. A case in point is that of Jai Parkash Narain whose interrogation has been postponed till the arrival of qualified interrogating officers from Bihar and Bengal, because Wace did not feel that his officers had necessary knowledge to interrogate him with any reasonable hope of success.

Yours sincerely,

(F.C. Bourne)

Sir Richard Tottenham, C.S.I.E., I.C.S.,
Secretary to the Government of India,
Home Department,
New Delhi.

1 Not printed

2 Doc. 98

3 Not printed.



114: Tottenham's memo for the Viceroy's council on the new ordinance (dt 26.10.1943) (extracts)

File No. 44/57/43 – Home Poll (I)

[NAI]

... After referring to the provisions of Regulations 18 (8) (3) (4) and (5) which dealt with the manner in which an aggrieved person might make representation after being furnished with such particulars as would enable him to present his case, the Chief Justice observed that 'Provisions similar to that are completely omitted from rule 26 of the Defence of India Rules. I draw attention to this matter in the hope that those responsible for this legislation may consider it'.¹

2. In making these remarks the Chief Justice was under misapprehension in two respects.

In the first place Regulation III of 1818 does not contain a specific provision for enabling the detenu to be told what are the grounds for his detention and for enabling him to show cause against it. The preamble to that Regulation refers to the fact that when it is determined that any person should be deprived of his liberty thereunder, he should at all times be allowed freely to bring to the notice of Government all circumstances relating either to the supposed ground of such determination or to the manner in which it may be executed. The operative part of the Regulation (section 5) reads:

the officer in whose custody any state Prisoner may be placed is to forward, with such observations as may appear necessary, every representation which such state prisoner may from time to time be desirous of submitting to the government.

The Government of India are advised (by a minute of the Law Member dated 7th of October 1932) that the policy of the Regulation is that the prisoner should be in no better position than to guess why he has been under personal restraint. The Regulation does not contemplate that he should know the grounds, far less that he can demand disclosure.

In the second place, although it is true that there is no direct provision in Defence Rule 26 for allowing a detained person to show cause against his detention, there is, of course, nothing to prevent any such person from making any representation he may wish to Government and many of them have, in fact, done so.

It is also true that the observations of the Chief Justice do not relate to any judicial issue before the court and that, as an expression of opinion, they have no binding force.

3. Nevertheless, the Home Department recognize that comments of this character coming from a high judicial authority have considerable effect on the public mind and must be examined with the respect that they deserve. The Home Department have for some time felt that the provisions of Defence Rule 26 in so far as they relate to detention are defective in several respects, namely –

- (1) the detention once ordered is of indefinite duration;
- (2) no provision is made for the periodical review of cases; and
- (3) no explicit provision is made giving the detained person a right to be heard on his own behalf or to be informed of the reasons for his detention.

Provisions of this kind, which are inherently in accordance with the public conscience,

would not weaken, but rather strengthen, our position in holding persons in detention without trial. The Home Department, therefore, recommend that the law governing detention without trial should be amended to contain provisions on the following lines:

(1) As soon as may be after an order of detention has been made the Government concerned shall -

- (a) inform the person detained of the grounds on which the order has been made against him, so far as it may be possible to do so without divulging secret information, and shall furnish him with such particulars as are in their opinion sufficient to enable him to present his case;
- (b) inform him of his right to make representations to Government in writing with respect to his detention; and
- (c) secure that he shall be given the earliest opportunity of making such representations if he so desires.

A proviso should be added to the effect that no public officer should be compelled to produce in evidence the grounds for detention or any representation in writing made under this provision and also to prohibit the disclosure to the public of the grounds for detention or the contents of any such representation.

(2) No order of detention shall continue to be in force for more than six months provided that the Government concerned, after further consideration of all the circumstances of the case, including any representations that the detained person may have made, may extend the period of detention for periods not exceeding six months at a time.

4 The Home Department further consider that it would be desirable to restrict the powers of subordinate authorities (to whom, at present, powers to make detention orders may be delegated under section 2 (4) and (5) of the Defence of India Act) on the lines adopted in the United Kingdom, where a Regional Commissioner under Regulation 18 BB may direct the detention of a person 'pending consideration by the Secretary of State of the question whether an order should be made against that person under Regulation 18 B'. The provision suggested should be to the effect -

- (a) that every subordinate authority to whom the power to make detention orders is delegated should report to Government every order of detention made by him as soon as possible after it had been made and should also forward to Government, with the least possible delay and with such comments as he might wish to make, any representation made by any person detained under his order, and
- (b) that all orders of detention passed by subordinate authorities should, when so reported be examined by Government and should only remain in force if approved by Government, in which case the order of the subordinate authority should be replaced by an order of Government.

5. In the ordinary way these proposals would be given effect to by amending Rule 26 of the Defence of India Rules. In view, however, of the fact that, as matters now stand, the Federal court has not decided one way or the other on the validity of that portion of Ordinance XIV of 1943 which purported to validate Defence Rule 26 and in view also of the fact that an appeal on this point to the Privy Council is pending, the Legislative Department recommend, and the Home Department agree, that the best course will be not to touch Defence Rule 26 itself but to promulgate a self-contained Ordinance which will embody the whole of its provisions, including those now under consideration. Since such an Ordinance would contain

several new features which would go a considerable way to meet public opinion, it should have a better reception than most Ordinances; and there is also the fact that an Ordinance is less liable to alteration than statutory rules and therefore would confer a greater degree of permanency on the provisions proposed above. A preliminary draft of such an Ordinance is accordingly attached to this summary.² It will be seen that it reproduces in a self-contained form the existing provisions of Defence Rule 26, covers the proposals made in paras 3 and 4 and provides for the continuance of the existing orders made under Rule 26 and the Application of the new provisions to those orders, so far as they are capable of application.

6. The observations of the Chief Justice quoted in paragraph 1 refer also to the advisory committee to which orders of detention may be referred under Regulation 18 B of the United Kingdom Regulations. The Hon'ble the Law Member has suggested that Government might concede the principle of advisory committees, though not necessarily on the United Kingdom model. He suggests that the advisory committee might consist of a high executive officer of Government sitting with a high judicial officer. The committee should then advise on the recorded materials, which should include the grounds furnished to the person detained and any representation made by him. It would be possible, in his opinion, to protect the grounds, the representations and any proceedings of the committee from being produced in court in connection with a habeas corpus application or otherwise; and the committee should deal only with original orders of detention and not with orders extending the period of detention. The Home Department recognize that any amendment of the law which did not introduce a counterpart of the advisory committee system in India would be unlikely to give complete satisfaction to public opinion in this country; and they do not deny that the committee procedure is best in principle. Nevertheless, they consider that the system would be unworkable in this country, where the number of different authorities concerned and the number of detention orders are considerably greater than in the United Kingdom, and they are convinced that Government must be careful not to create by statute obligations which in practice it would be very difficult to fulfil. Great practical difficulties were actually experienced in constituting reviewing committees some time ago to examine detention orders; and if there was a legal obligation to appoint such committees difficulties would immediately arise regarding their composition and the manner in which it should be defined by law. Consultation would almost certainly be necessary both with Provincial Governments and with High Courts, before the wording of the law could be settled, and this would only delay the promulgation of the proposed ordinance; there is also no doubt that it would be extremely hard to find suitable high executive officers who had not been concerned with, or responsible for, the orders which had to come before the advisory committee. The Home Department would definitely prefer, therefore, to be relieved of this obligation.

7. These proposals have received the general concurrence of the Defence Department. The proposals in paras 3 and 4 would gravely embarrass them. The military authorities in Assam and Bengal have already been compelled to use Defence Rule 129 and Defence Rule 26 for the detention of a considerable number of enemy agents who have been sent into India from Burma and other countries; and it is quite possible that the numbers of such persons, civil and military, will reach very large proportions. Certain military officers have already been vested, by delegation, with powers under Defence Rule 26 and, in the nature of the case, it is difficult to establish the guilt, or the degree of guilt, of the persons arrested. The most careful examination, and often most prolonged interrogation, are necessary to establish grounds for action; and the authorities to whom powers under Defence Rule 26 have been delegated

would be gravely embarrassed if their powers of detention were restricted in the manner proposed. The Central Government itself would also be gravely embarrassed if it became necessary to confirm every order passed by subordinate authorities, to inform each detained enemy agent of grounds for action against him, to invite representations from such persons (they may run into many hundreds), and review each case at frequent intervals. The Home Department recognize the force of these objections and consider that some special powers (quite independent of Defence Rule 129 and Defence Rule 26) should be devised for dealing with this particular problem. The Defence of India Rules, as drafted, were not really intended for such a purpose. In this opinion the Defence and Legislative Departments agree and certain proposals on these lines are already under consideration. Meanwhile the Home Department recommend that their proposals should be accepted to cover the cases of persons who are normally made the subject of detention orders. If this recommendation is approved, they further recommend that the proposals should be communicated to provincial Governments for information, but not for an expression of opinion, before they are given effect to.

8. The case is submitted for H.E.'s orders whether it should be circulated to Hon'ble Members, either for opinion, or for discussion in council.

R. Tottenham
26.10.43

Secretary to the Governor-General (Personal)

Circulate to Hon Members with a view to discussion in council.

Wavell
29.10.43

1 See Doc. 47 (Chief Justice Derbyshire's judgement)

2 Not printed

115: Official Notings – Treatment of security prisoners (dt 29.10.1943–7.11.1943) (extracts)

File No. 44/37/43 – Home Poll (I)
[NAI]

The excellent summary¹ prepared by office gives a clear general picture of this very complicated question as it is ever likely to be possible to obtain. We have asked for information urgently from the U.P. to complete the picture. Even then, it will be seen that we are on many points of detail far from clear as to what the provincial practice is. With the exception of the few outstanding points which will be dealt with below, the situation as regards matter of principle is I think satisfactory; there is no doubt that there has been a considerable levelling up since the issue of our letters of July 21st² and September 14th,³ and no alteration of our principles as they now stand, nor any further general letter to provinces on the subject, appears necessary for the moment. It would, nevertheless, be of considerable value particularly round

about Assembly time, if we could have a more complete picture of the detailed practice in provinces. It is not, I think, any good going back repeatedly to provinces over individual details and I would suggest as an alternative, and more hopeful method of approach, that we should adopt a procedure similar to that used for obtaining statistics of the Congress movement. I would suggest that we should supply to provinces a printed or cyclostyled form giving in one column, the principles laid down by us for the treatment of both Congress and non-Congress S.Ps. and asking them to note against each, in another column, the practice adopted in the province. The result would be a table on the lines of the enclosure to the Bengal letter of 31.8.43^b and we could ask provinces to let us have a revised version every six months, timed to arrive shortly before the opening of the autumn and spring sessions of the legislature. It is now too late to hope to get any complete statement on these lines before the coming session; details of provincial amendments to their rules are gradually coming in and helping to complete the picture; and I would suggest therefore that we should wait until about the middle of December and then address Provinces on these lines asking for their first statement to be submitted by about the end of March. I think incidentally that all Provincial amendments and orders, a number of which have been included on the correspondence Folio I, should be removed and kept separately and I think the clearest way will be to keep a separate set of provincial rules and orders for each province as a separate loose-leaf folio, to which amendments are made as they are received.

2. As observed above, there is at the moment no matter of principle arising out of further provincial replies since the issue of our letter of 14th September. The only question of general application is that raised in para 4 of the Punjab Government letter of 9th October.⁷ This is not quite as simple as it would appear at first sight. As far as correspondence is concerned — and this is only specific point raised by the Punjab — our principle can probably be taken as representing a minimum only, and there is probably no great objection to any province which wants to exceeding that minimum as the Punjab have done. On the other hand, there are a number of matters of principle where more generous treatment than that laid down by us would be definitely embarrassing; an obvious example is that of parole, and such questions as accommodation, allowances and funds and possibly even interviews, fall within the same category. We cannot, therefore, agree to a general interpretation of our principles as minima, below which provinces should not lower their standards, but which may be exceeded at the provinces' discretion. There are one or two other examples in which our principles have been exceeded — the question of diet in Sind, for instance, referred to below, and I think our attitude must be that, in the interests of uniformity, the principles laid down by us should be as far as possible strictly adhered to, provincial practice neither falling short of them nor exceeding them.

A general reference to this question might be noted for inclusion in the letter to provinces suggested in the preceding paragraph.

The following individual points arise from provincial replies and may be dealt with in separate letters to the provinces concerned.

- (a) *Bengal:* Correspondence of congress S.Ps. see item 7 of statement B enclosed with their letter of 31.8.43.^b We could reasonably insist on any Bengal S.P. whom the Provincial Government can definitely call a Congress, as opposed to a terrorist, prisoner (see para 2 of their letter), to conform to our principle as regards correspondence; the number is not great, but, on the other hand, the principle is I think important. We might I think extend the references and insist that this restriction of correspondence should be applied

to all security prisoners detained in connection with the Congress movement whether they are regarded as 'Congress' or 'Terrorist' by the provincial Government. I think we should be justified in insisting on this but the point is for orders.

- (b) *Punjab*: Our reply to para 4 of the Punjab letter of 9th October,⁷ should I think be to the effect that we wish our principles to be as strictly observed as possible in the interests of uniformity, but that in the specific matter of correspondence raised by them, we agree that withdrawal of the concession already granted would be undesirable and have no objection to the practice continuing; we should ask for examples of any other specific points on which their practice exceeds our principles. We should at the same time I think specifically enquire about family allowances, which were previously forbidden to Congress security prisoners in the Punjab.
- (c) *C.P.*: In their letter of 7th October⁸ they have indicated that their practice in regard to correspondence of Congress security prisoners is rather more liberal than our principle. As in the case of the Punjab. I do not think we need object and no separate reply to the C.P. is necessary.
- (d) *Orissa*: In their letter of 17th September, ⁹ Orissa express the intention of retaining their single class of security prisoner. Since they have only two non-Congress security prisoners, we need not object at this stage, but there would I think be no harm in our making it clear that should the number increase, we should regard a separate non congress classification as essential. An added reason for this is that as regards amenities (see para 2, diet allowances in their letter) their prisoners are at present apparently treated as class I.
- (e) *Sind*: In para 2 of their letter of 1st Oct.¹⁰ Sind have refused to accept our principle that where segregation between Congress and non-Congress S.Ps. was not possible, classification of Congress S.Ps. should follow that adopted for non-Congress S.Ps. They are at present therefore treating their Congress security prisoners as a special single class, which is incidentally getting class I treatment, although they are not segregated from the ordinary non-congress security prisoners. Our principle was I think based on the idea that it would give rise to difficulties in practice if persons of roughly equivalent status, kept together, were treated differently according to whether they were Congress or non-Congress, and this reasoning still seems to me sound, though Sind have in practice apparently had no difficulty in enforcing the differential treatment. Owing to superior treatment which their Congress security prisoners are getting, they would doubtless find it difficult now to adopt classification which would result in the down-grading of a number of their prisoners. The only real objection that I see to their present practice is that all their Congressmen are receiving class I treatment, which is in many cases doubtless not justified. I doubt, however, whether it is worth our insisting on the enforcement of our principle in this case, and I would suggest that we should write accepting the present position, but stating that if further Congress prisoners were detained, we would expect our principle to be observed.

S.J.L. Olver
29.10.43

V. Sahay
29.10.43

As regards the question of principle dealt with in para 2 of Under-secretary's note, our difficulty in practice has been to get provinces up to a certain level of treatment of security prisoners

rather than the reverse. The treatment which we have prescribed has in general been that which we considered sufficient, but not more than sufficient, to enable us to defend it and we should, I think, be putting ourselves in a false position if, after all the efforts we have made to improve the general level of treatment, we now asked provinces to scale down their practice in certain matters in which provinces should not be allowed to be too generous. These are really security matters rather than matters of ordinary treatment and are mainly concerned with interviews and correspondence. I should not be inclined to countenance too much latitude in regard to interviews; but in regard to correspondence we can allow provinces a certain margin particularly where, as in the Punjab, more latitude in regard to correspondence is accompanied by greater restrictions in regard to interviews. In such matters as segregation, diet, classification, etc., I should leave provinces a fairly free hand except where their treatment was obviously below the general level. These remarks will apply to the proposals made in para 3 of Under Secretary's note. . . .

I do not think I shall require these papers when the various questions in the Assembly are to be answered, but the combined statement at flag F will probably be useful at that time.

The various Assembly question files are returned herewith.

R.M. (Maxwell)
Home Member, 7.11.43

1. Summary of replies received from the Provinces regarding the practices adopted by them in the treatment of Security Prisoners – this summary is not printed.
2. Doc. 50.
- 3, 4, 5, 6, 7, 8, 9 and 10. Not printed.

116: Govt. of Orissa to the Govt. of India – (dt 30.10.1943) (extracts)

File No. 44/2/43 – Home Poll (I)
[NAI]

In reply to your secret D.O. No. 44/2/43 – (II) Poll (I) dated the 28th August, 1943,¹ to Bowstead regarding the treatment of prisoners detained under rule 129 of the Defence of India Rules, I am desired to say that the gist of the proposals seems to be that, where any investigation has to be done during the period of detention under rule 129 or where the prisoner has to be interrogated, he should be in Police custody, while only in those cases where no further investigation is required as to the necessity for detention or where no interrogation has to be done, the prisoners are to be detained in jail custody. In the opinion of the Provincial Government, however, the mere fact that the Police are investigating the case against the suspect should not make it necessary to detain him in Police custody. As regards interrogation also, this can be done by interview in jail, or, if necessary, by temporary remand to Police custody for this purpose. There are certain practical difficulties in keeping prisoners in Police custody for any length of time, which would appear to render necessary the opening of a sort

of Police jail at every District Headquarters and the building up of a special Police staff trained as jailors. It is also apprehended that this course will not be well-received by public opinion.

2. A notification under clause (h) of sub-rule (1) of rule 129 has now been made by the Provincial Government (copy enclosed).²

1 Not printed.

2 Not printed.

117: Minutes of the Viceroy's Council's meeting (extracts)

File No. 44/57/43 - Home Poll (I)

[NAI]

Wednesday, the 10th November, 1943, at 6 p.m.

Case No. 148/56/43.

Proposed Ordinance to replace rule 26 of the Defence of India Rules.

Present

His Excellency the Viceroy.

His Excellency General Sir Claude Auchinleck, GCIE, CB, DSO, OBE, ADC.

The Hon'ble Sir Ronald Maxwell, KSCI, CIE.

The Hon'ble Sir Jermy Raisman, KCSI, CIE.

The Hon'ble Dewan Bahadur Sir A. Ramaswami Mudaliar, KCSI

The Hon'ble Sir Sultan Ahmed. D.L., Barrister-at-Law.

The Hon'ble Malik Sir Firoz Khan Noon, KCSI, KCIE.

The Hon'ble Sir Edward Benthall

The Hon'ble Sir Mahomed Usman, KCIE.

The Hon'ble Dr B.R. Ambedkar

The Hon'ble Sir Jwala Prasad Srivastava, KBE.

The Hon'ble Sir Jogendra Singh.

The Hon'ble Sir Muhammad Azizul Huque, CIE, D.Litt.

The Hon'ble Dr N.B. Khare, M.D.

The Hon'ble Sir Asoka Roy, Barrister-at-Law.

C.M. Trivedi, Esq., CSI, CIE, OBE, ICS. (Secy., War Department).

J. Bardey, Esq., CSI, CIE, ICS. (Addl. Secy. and Draftsman, Legislative Department).

Sir Richard Tottenham, CSI, CIE, ICS. (Addl. Secy., Home Department).

E.M. Jenkins, Esq., CSI, CIE, ICS. (Private Secy. to H.E. the Viceroy).

Sir George Spence, KCIE, CSI, ICS. (Secretary to the Executive Council).

Decision

The proposals were approved subject to further examination of . . .

- (1) questions of detail including the question whether the provision for six-monthly review should be retained;
- (2) the simultaneous treatment of the category of detenues referred to in paragraph 7 of the Summary.

1 Not printed.

118: Official Noting – Treatment of security prisoners: Question in Assembly (dt 11.11.1943) (extracts)

File No. 22/62/43 – Home Poll (I)
[NAI]

I presume that it is not intended, in reply to this question, to enlarge on the details already given to Sardar Mangal Singh (File No. 22/45/43 – Poll (I))¹ In connection with the reply to Sardar Mangal Singh's question, H.M. has already been supplied with a statement showing the details, so far as we know them, in regard to which Provinces have improved their treatment as a result of our reference to Mr Krishnamachari's resolution.²

2. I put up a draft reply.

S.J.L. Olver
11.11.43
Under Secretary

1 Not printed – question regarding treatment of prisoners.

2 See Doc 19 in Chapter I – Sec C

119: Official Notings – Maxwell's discussion with the Viceroy (dt 12.11.1943) (extracts)

File No. 44/57/43 – Home Poll (I)
[NAI]

Discussed with H.E. today. He noted the following points as outstanding for consideration–

- (1) The six-monthly period,
- (2) Supply of information to prisoners,
- (3) Advisory Committees and
- (4) The Commander-in-Chief's point.¹

(2) I think C.-in-C.'s point will be met if we give at least a month's notice to Provinces

within which the War Department Ordinance can be ready. Advisory Committees were not recommended in our proposals to Council and although the Law Member mentioned the point, I think Council have accepted our recommendations. As regards supply of information to prisoners about the grounds of their detention, need we suppose that this will present any material difficulty? The main point for consideration will be the six-monthly period which might give rise to agitation for the release of Gandhi and members of the working Committee whenever renewal of orders became due. As I pointed out, this proposal could, if necessary, be dropped without affecting the other proposals. But I am not inclined to do so, especially as we are not accepting Advisory Committees. Although there is no such provision in the corresponding Regulation in Great Britain, sub-clause (2) of Regulation 18B has somewhat the same effect since under sub-clause (3) a refusal of the Secretary of State to suspend the operation of an order must come before the Advisory Committee. I feel myself that one of the principal causes of objection to the detention orders at the present moment is their indefinite duration.

3 H.E. proposed to consult Governors informally about this proposal at his forthcoming conference before bringing the matter again before Council. For this purpose a sufficient number of copies of the draft Ordinance together with a covering Summary should be supplied to P.S.V. Probably the Summary placed before Council would be sufficient. But Additional Secretary might consider whether it needs any modification for this purpose. It might be well to add the preliminary explanations of these proposals which I gave in the Council discussion. For this purpose Additional Secretary may refer to the first paragraph of the minutes of the discussion held on the 10th November. P.S.V. will circulate copies of the draft Ordinance and of our summary privately to Governors before discussion with H.E. The Governors' Conference will, I understand, begin a week hence, so necessary copies should reach P.S.V. before their arrival.

File is returned herewith.

R.M. Maxwell
Home Member
12.11.44

Our summary for council¹ was rather long and, if it had been a question of preparing a new one, it might have been worth while considering -

- (1) the replacement of paras 1 and 2 by a much briefer exposition of the Chief Justice's comments; and
- (2) the replacement of paras 3 and 4 by something much briefer on the lines of H.M.'s opening remarks to Council.

The stencil is, however, still in existence, and the summary does present the whole case in a self-contained manner. I would, therefore, propose to retain it as it is, except for the last eight lines. The summary could then end at the words 'detention orders'. . . .

R. Tottenham

1. See Doc. 123 - last para.

2. Doc. 114



120: Press speculations about DIR and ordinances (12.11.1943 and 14.11.1943)

File No. 22/62/43 – Home Poll (I)

[NAI]

F. 22/62/43 – Poll (I)

Bureau of Public Information

Government of India

1. Name of Paper *The Bombay Chronicle*
2. Published at Bombay
3. Dated 12.11.43

Fate of Indian Detenus

Delhi Speculations

(From Our Correspondent)

New Delhi, Nov. 12

The recent Federal Court judgements vis-a-vis detenus has been under close examination of the authorities here.

One view is that the provision under Defence of India Rules for indefinite detention without appeal is too drastic and contrary to British conception of rule of law.

Lobby circles believe Government is likely to modify such provision with a view to give facilities to detenus for right of appeal. Similarly the period of detention under Defence of India Rules is likely to be limited. It is pointed out that Government already possess powers under the regulations to indefinitely detain persons, if it is so desired.

It is also learned that the decision to allow interviews with Congress detenus, including members of the Congress Working Committee has been left with the Provinces.

22/62/43 – Poll (I)

Bureau of Public Information

Government of India

1. Name of Paper *The Bombay Chronicle*
2. Published at Bombay
3. Dated 14.11.43

Move to Review Security Prisoners' Cases

(From Our Correspondent)

New Delhi, Nov. 14

A Board of Revision I understand is being set up to review the cases of all Congress security prisoners periodically.

According to lobby anticipations Government is shortly amending Defence of India Rules which at present empowers indefinite detention. According to the revised plan, no detention will be permissible for more than six months, which period could be extended by six months at a time. The defence will be furnished grounds for detention and be allowed permission to make representation for refuting the charges. His representation will be considered by the Revision Board which otherwise also will review cases periodically every six months. Congressmen presently under detention will be regarded arrested 'de novo' and their cases will be subject to review immediately.

121: C.L.A. question regarding detention rules (extracts)

File No. 2262/43 - Home Poll (I)

[NAI]

Bureau of Public Information Legislative Assembly

The question is down for meeting on 15.11.1943¹

190. **Mr T.T. Krishnamachari:** Will the Honourable the Home Member please state:

- (a) what steps have been taken by Government following the discussion in the House on the resolution for the better treatment of political prisoners, to implement the assurances contained in the Honourable the Home Member's reply to debate;
- (b) whether the Central Government have framed a new set of regulations for the treatment of political prisoners who are detained by their orders; and
- (c) whether the Government of India have addressed the Provincial Governments on the matter; if so, with what results?

The Hon'ble Sir Reginald Maxwell:

(a) and (c): as a result of the debate on the Honourable Member's resolution in the last session, the Government of India addressed Provincial Governments, laying down certain further principles in regard to the treatment of security prisoners. The results were described in my reply to Sardar Mangal Singh's question No. 70 on November 10th.

(b). No.

Mr T.T. Krishnamachari: May I ask the Honourable Member if his attention has been draw in to the press note published in the '*Hindustan Times*' (news item given below) this morning which say that the Government of India are considering the question of revising detention rules, and that they propose to detain, under Rule 26, only for six months, and they are setting up Revision Boards for considering the question of further detention of these people? — **The Honourable Sir Reginald Maxwell:** My attention has only just been drawn to the paragraph in question which appears to have been published without any authority.

Enclosure

Press Report — *The Hindustan Times* dt Nov. 15, 1943.

Government to Revise Detention Rules

Setting up of Revision Boards

Proposed Facilities for Security Prisoners

(From our Special Correspondent)

New Delhi, Sunday . . . 14.11.43

I understand that the Government of India are considering the question of revising detention rules under the Defence of India Act.

According to the proposed revision, a detention order under Defence Rules 26 will normally be for a period of six months, but the Government will have the right to renew any such order for a further period of six months. In practice, this will not make much difference, for the Government can keep a man in detention for any length of time by issuing renewal orders every six months.

It is also proposed to set up Revision Boards in every province who will periodically examine the cases of detenus and make recommendations in the Government.

Detenus will, if they so desire, be given a statement of the charges against them. In reply to these charges they will be allowed to make representations. For preparing their defence and placing their case before the Revision Board they will be permitted to have the assistance of their lawyers.

The proposed revision follows to some extent, the recent changes in detention rules in the United Kingdom.

1 CLA debates - 14 to 21 Nov. 1943 (CLA Debates, Vol. V, 1943 - NMML)

2 See Doc. 19 in Chapter I - Sec. C

122: Extracts from the proceedings of the Governors' conference, New Delhi, November 1943 — (middle of Nov. 1943)

File No. 44/57/43 - Home Poll (I)

[NAI]

Draft ordinance replacing Rule 26 of the Defence of India Rules.¹

The Viceroy said that this measure, which he had asked the Home Member to circulate to Governors during their stay at New Delhi, had the full support of his Executive council. He would be obliged if Governors would communicate their remarks to the Home Member as soon as possible, as the case would come before Council again shortly. He hoped that the change would not cause undue inconvenience in the Provinces.

The Governor of Bengal said that it was important that the new Ordinance should come into force before the 15th December next, the date of the hearing of some Habeas Corpus cases in Calcutta.

Arising out of Tottenham's memorandum (Doc. 114).

123: Official Note – Ordinance to replace Defence Rule 26 (dt 16.11.1943)

File No. 44/57/43 – Home Poll (I)

[NAI]

Home Department

The Federal court in its original judgment declaring Defence Rule 26 to be ultra vires of the rule making power, drew attention to the obligation which, in its opinion, lay on those who had the power to make detention orders to specify as clearly and accurately as possible the true grounds on which the order was made. Provincial Governments were addressed on this point in a Home Department letter of May 1st, 1943.¹ Subsequently, in what was known as the 'contempt case', the Chief Justice of the Calcutta High Court last July dilated, in the same connection, on the legal maxim *audi alteram partem*.² He referred (wrongly) to the provisions of the State Prisoners Regulations and (rightly) to those of the United Kingdom Defence Regulations, under which a person detained without trial has a right to be informed of the grounds for the order and to make representations against it. Under United Kingdom Regulation 18 I there is a system of advisory committees to which 'any person aggrieved by the making of an order against him, by a refusal of the Secretary of State to suspend the operation of such an order, by any condition attached to a direction given by the Secretary of State, or by the revocation of any such direction' may make his objections. It is the duty of the Secretary of State to secure that 'any person against whom an order is made shall be afforded the earliest practicable opportunity of making to the Secretary of State representations in writing with respect thereto and that he shall be informed of his right, whether or not such representations are made, to make his objections to an advisory committee'. It is also prescribed that the Chairman of the advisory committee is to inform the objector of the grounds on which the order has been made against him and furnish him with such particulars as are in the opinion of the Chairman sufficient to enable him to present his case'. The Secretary of State has to report to Parliament at least once a month the action taken under this Regulation and the number of cases, if any, in which he has declined to follow the advice of an advisory committee. The Chief Justice of the Calcutta High Court drew attention to this matter 'in the hope that those responsible for this legislation may consider it'.

2. Although the observations of the Chief Justice did not relate to any judicial issue before the Court and, as an expression of opinion, had no binding force, the Home Department recognised that comments of this character have a considerable effect on the public mind and must be examined with the respect that they deserved. For some time they had felt that the provisions of Defence Rule 26, in so far as they related to detention, were defective in several respects, namely –

- (1) the detention once ordered is of indefinite duration;
- (2) no provision is made for the periodical review of cases
and
- (3) no explicit provision is made giving the detained person a right to be heard on his own behalf or to be informed of the reasons for his detention.

The Home Department also considered that it might be desirable to limit the powers of subordinate authorities, to whom the power to make detention orders might be delegated under the Defence of India Act, on the lines adopted in the United Kingdom, where a Regional Commissioner under Regulation 18BB may direct the detention of a person 'pending consideration by the Secretary of State of the question whether an order should be made against that person under Regulation 18B'. The Home Department had no desire whatever to make it more difficult for any Government to place persons in detention; but they felt that provisions of the kind referred to were inherently in accordance with the public conscience and that their incorporation in the law would not weaken, but rather strengthen, the hands of Government in keeping persons under detention without trial. Since the Government of India is primarily responsible for war legislation and its operation by the Provinces, the Home Department also considered that there was no necessity to consult Provincial Governments on the principles involved, although they would have to be given full warning of the changes proposed and an opportunity to bring to light any administrative difficulties that might be involved in giving effect to them.

3. In the ordinary way these proposals might have been given effect to by amending Defence Rule 26. The ruling of the Calcutta High Court that Ordinance XIV of 1943, which had amended the Defence of India Act so as to validate Defence Rule 26, was itself invalid on the ground that an Ordinance could not amend an Act of the Indian Legislature, led to pressure by the Bengal Government for the replacement of D.R. 26 by a substantive Ordinance. The Government of India had hoped that this aspect of the case would be disposed of by the decision of the Federal Court on the appeal from the Calcutta decision; but the Federal Court abstained from deciding this crucial issue with the result that the whole position is still left open. In these circumstances it was thought preferable to replace D.R. 26 by a new self-contained Ordinance which would incorporate the 'liberalizing proposals' referred to above. The draft of such an Ordinance is attached to this note. Clauses 3 to 5 merely repeat the provisions of D.R. 26; clauses 6 to 11 contain the new provisions (see especially clauses 7, 8 and 9); while clauses 12 and 13 reproduce certain necessary provisions of the Defence of India Act.

4. At a preliminary meeting of council the general principles of the new Ordinance were accepted, but no final decisions have yet been reached. There are three outstanding points:

- (i) *Advisory Committees.* There has been some feeling that, if the provisions of Defence Rule 26 are to be liberalized on the basis of United Kingdom practice, it might be as well to go the whole distance and introduce some form of advisory committees in this country, though not necessarily on the exact United Kingdom model. The Home Department do not deny that the advisory committee system may be the best in principle, but they consider that it would be unworkable in this country, where the number of different authorities concerned and the number of detention orders are considerably greater than in the United Kingdom. They are also convinced that Government must be careful not to create by Statute obligations which, in practice, it would be very difficult to fulfil. Great practical difficulties were actually experienced in constituting reviewing committees some time ago. Moreover, the proposal that detention orders should not remain in force for more than six months unless renewed, which has no counterpart in the United Kingdom Regulations, may, to some extent, be regarded as a substitute for advisory committees, since it will ensure a constant review of cases.
- (ii) *The practical difficulties involved in the six months limitation and in supplying information to detained persons.* For the reasons given under (i) the Home Department would prefer

to keep the six months limitation, although the proposal could, if necessary, be dropped without effecting the other proposals. It appears from the provisions of the United Kingdom Regulations quoted in paragraph 1 that the case of a detained person may repeatedly come before an advisory committee on a variety of grounds and certainly one of the principal cause of objections to detention orders at present is their indefinite duration. The ordinance has, however, been so drawn as to make all existing detention orders passed under Defence Rule 26 date from the commencement of the new ordinance, with the result that Provincial Governments will have an interval of six months in which to complete their reviews and decide which of the orders are to be further extended. It is not thought that any difficulty should attend the completion of the necessary processes within this period. The Home Department also do not think that there should be any great difficulty in supplying sufficient information to detained persons about the grounds of their detention. It is not, of course, contemplated that secret evidence should be revealed or that any lengthy exposition of the grounds for detention should be given. In most cases, it is thought, a very brief statement would suffice.

- (iii) *The case of enemy agents etc.* The Commander-in-Chief has pointed out that the new procedure would be embarrassing if applied to the class of persons entering India from Burma etc. who are now examined at various Interrogation Centres and against whom orders under defence Rule 26 are passed if there are grounds for suspecting them to be enemy agents. In the nature of the case the evidence of the guilt of these persons does not exist in India, but in the country from which they come. The most careful examination, and often most prolonged interrogations are necessary to establish grounds for action, and it is generally agreed that some special powers (independent of the Defence of India rules) should be devised for dealing with this particular problem. This question is under separate examination.

(R. Tottenham)
Additional Secretary.

1. Doc. 30 2. Doc. 47 3. Not printed. Final version of the Ordinance - Doc. 145 - may be seen

124: Press report on Government's decision to revise Detention Rules (dt 17.11.1943)

File No. 22/62/43 - Home Poll (I) - 1943

| | |
|------------------|------------------------|
| 1. Name of Paper | <i>Hindustan Times</i> |
| 2. Published at | New Delhi |
| 3. Dated | 17.11.43 |

The Hindustan Times

Wednesday, November 17, 1943

Detention Rules

According to certain Press reports, Lord Wavell has taken up question of revising detention rules under the Defence of India Act. Whatever may be the truth of these reports, the new

Viceroy must be doubtless aware that quite apart from considerations of ordinary justice and equity, recent judgements of the Federal Court¹ and High Courts² have cast a moral, if not legal, obligation on the Government of India to revise these rules. It was the Chief Justice of Calcutta, Sir Harold Derbyshire,³ who expressed surprise that there was no provision under Rule 26 to inform a detenu of the grounds on which he was detained and also no provision for his being allowed to show cause against his detention. After referring to the old principle of the law enunciated in the Latin maxim *audi alteram partem* which meant 'Hear the other side' he expressed the hope that those who were responsible for the omission of these provisions from Rule 26, might consider it. Though four months have elapsed since the Chief Justice made these observations, nothing has been done to revise these rules so as at least to bring them into conformity with the practice obtaining in the United Kingdom. It can hardly be denied that the procedure still being followed in India in arresting and detaining people for political reasons under Defence rule 26 has a mediaeval touch about it. This procedure is all the more indefensible as the legality of the rule itself has been questioned by the highest court in the land.

There is the oft-quoted dictum of Lord Atkin that 'in accordance with British jurisprudence, no member of the executive can interfere with the liberty or property of a British subject except on condition that he can support the legality of his action before a court of justice and it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive.' The way in which Defence Rule 26 has been used in this country for purely political purposes goes counter to this well-known principle of British jurisprudence. So strangely muddled is the executive mind that subordinate officials have gone to the length, for instance, of arresting under Defence Rules, a Press reporter for an alleged wrong report and a Barrister who merely went to another province for filing a *habeas corpus* application. Not only are the authorities passing detention orders unwilling to prove the legality of their action before a court of justice but they are not even prepared to submit the cases of these detenues to an independent committee or tribunal for judicially examining the worth of the evidence', if any, on the basis of which these persons have been detained. They are neither told the charges against them nor given an opportunity to defend themselves. In England, the public has at least the satisfaction of knowing that the Home Secretary, who is answerable to Parliament, goes into every case personally before passing an order for detention, but in India it is the executive which has practically constituted itself into the prosecutor, the judge and even the rule-making authority to detain persons at will. The Federal Court felt constrained to observe in a recent case: 'Today, in India the situation is complicated by the fact that when large and undefined powers are entrusted to Provincial Governments and their executive officers, the constitutional limitations, conventions and etiquette implied in the theory of provincial autonomy make it difficult even for the authority promulgating the ordinances to interfere to check the improper use of such powers.' We consider it the clear duty of Lord Wavell not only to revise these detention rules with some regard to accepted standards of justice and equity, but to take up the larger question of examining whether there is any justification for retaining the many Ordinances and Defence Rules issued by his predecessor in reckless disregard of ordinary civil liberties.

1. Name of Paper *National Call.*
2. Published at New Delhi.
3. Dated 17.11.47.

National Call

Detention Rules Need for Revision

The existing rules under the Defence of India Act regulating the thorny subject of detention of political prisoners, is notorious, are extremely harsh. Therefore, the report that the Government of India is at present engaged in considering a revision of these rules, if true, is very welcome. At present, numbers of politically-minded men in all provinces are detained under these rules at the pleasure of the Administrations concerned. The detenus are not given a charge sheet or otherwise apprised of the offences for which the authorities find it necessary to keep them in jail and much less are there any facilities afforded to these unfortunates who have chanced to incur the displeasure of the authorities to defend themselves legally in judicial proceedings. Further, once a political suspect was kept in detention as an undesirable from the Government's point of view, there was no machinery for reconsideration of his case in the light of altered circumstances inevitably brought about by the passage of time. Once a detenu always a detenu' seems to be the guiding principle governing these hard cases. It is undeniable that the unsympathetic application of such rules by unimaginative authority has led to much avoidable and unjust sufferings.

The proposed revision, if caused into effect, should certainly go some small way in mitigating this undue severity. In the first place, the proposed rule that all detentions will normally be for a period of six months, subject to renewals where necessary would, if applied carefully, do away with the scandal of detentions without a time limit. True the authorities are still vested with power to order renewals of the detention period but in working practice the proposed rule for automatic revision of detention awards after the initial period of six months, should tend to a more humane application of the rules and the release of many an unoffending detenu. Much will of course depend on the personnel of the Revision Boards that are to be set up in the provinces for this purpose and the spirits in which they administer their powers and discharge their responsibilities. The new rule that the detenus will be duly apprised of the charges against them and given facilities for proper defence by lawyers satisfy only the barest essentials recognised by civilized judicial procedure. All the same these provisions will tend to free the Government from the odium necessarily attaching to imprisonment without specific charges and denial of adequate defence facilities.

The proposed revision, we understand, follows to some extent the recent changes in detention rules in force in the United Kingdom. In Great Britain a Government elected by the will of the people, is in power, whereas in India an alien bureaucracy is enthroned in power against the will of the people. The protection of detenus by at least a minimum of legal safeguard is therefore a vital necessity in India. It is to be hoped that the proposed revision will be carried out immediately and in such a way as to lead to a general gaol delivery of innumerable detenus now kept behind prison bars.

1 Doc. 27.

2 Doc. 29.

3 Doc. 47



125: Deputy Private Secretary to the Viceroy to the Addl. Secretary Government of India

File No. 44/57/43 – Home Poll (I)
[NAI]

DO No. 7 256/4/GG/43,

The Viceroy's House. New Delhi
dated 19th November, 1943

From Mr G.E.B. Abell, D.P.S.V. to
To Sir R. Tottenham,
Addl. Secy., Home Department.

The Governor's Secretary, Bengal, had just told me that, as far as his Governor is concerned, the Ordinance about Rule 26 of the Defence of India Rules is welcomed; in fact the sooner it is promulgated the better for Bengal. You will be receiving a letter from the Governor's Secretary direct, I believe.

Yours sincerely
(G.E.B. Abell)

To
Sir Richard Tottenham, CSI, CIE.

126: Government of Assam to the Home Member, Government of India

File No. 44/57/43 – Home Poll (I)
[NAI]

D.O. Letter No. 247–G, dated the 25th November 1943 from H.E. Sir Andrew G. Clow, Governor of Assam to Sir Reginald M. Maxwell, Home Member.

My dar Maxwell,
When in Delhi I received a copy of the Draft Ordinance to replace Defence Rule 26. While I recognize that there are good grounds for the changes it is proposed to introduce, and provisionally I am not disposed to question them seriously, some of them will undoubtedly make the position more difficult for Provincial Governments and I hope that before His Excellency promulgates the Ordinance, they will be given an opportunity of commenting on it. As the draft was given to me personally, I had not felt the liberty to show it to my Government.

Yours sincerely
A.G. Clow

127: Official Notings (reg. the new ordinance) (dt 25.11.1943-30.11.1943) (extracts)

File No. 44/57/43 - Home Poll (I)

[NAI]

In view of the preceding note¹ it is presumed that this case² will have to be mentioned in Council again before we can address Provincial Governments. Since the Bengal Government, in particular, is most anxious that the Ordinance should be promulgated before December 15th,³ if possible, it is desirable that the case should come before Council again at the earliest opportunity after H.E.'s return. It is also suggested that it may not be necessary to enter the item formally on the agenda, but that it might suffice if H.E. were to explain, with reference to the conclusions of the last meeting, that he had had further consultations with the Home Member and the Commander-in-Chief on the two points mentioned and that he had also taken the opportunity to provide Governors while they were in Delhi with a note on the whole subject. He was now satisfied that the case might proceed on the basis of the proposals made by the Home Member and generally accepted by Council, and he, therefore, proposed that the Home Department should address Provincial Governments immediately, with a view to the promulgation of the Ordinance about the middle of December. Such an early date was desirable in view of the effect that the Ordinance might have on certain cases which would come up shortly for consideration in the Courts, especially in Calcutta; but if any Provincial Government were to press for an extension of time for valid reasons, the date of promulgation might have to be reconsidered.

2. The amended draft letter⁴ to Provincial Governments, if approved, may be held in readiness for issue directly after the Council meeting. It should, however, be seen first -

- (a) by the War Department, who may be asked whether their proposals for their new Ordinance will be ready by the date suggested; and
- (b) by the Legislative Department, who may be asked whether they have any comments to make regarding the concluding sentences of paragraph 3 or the Annexure to the draft, or generally.

(R. Tottenham)
Additional Secretary
25.11.43

War Department

War Dept. new ordinance is almost ready and is now with Mr Bartley for addition of a provision dealing with existing orders under Rule 26 of Defence of India Rule. Our ordinance has not yet been seen by Home, Defence and Legislative Dept., but we hope to send the file to them as soon as it is returned by Mr Bartley. The case has not yet been seen by H.E., and we don't know whether H.E., would wish to take it in Council. We do not anticipate any difficulty in promulgating our ordinance on the morning of 14th December unless any unexpected hitch occurs.

C.M. Trivedi
25.11.43

Legal Dept. (Sir G. Spence)

Legislative Department

I have made some suggestions in the text of paragraphs 3, 5 and 8.¹¹ The second ground given in paragraph 3 for the switch to the general or special order phraseology is, if I may say so, beside the point in as much as sub-rule (5) of Rule 26 obviously admits of a special no less than of a general determination.

2. The reference in paragraph 8 to 'promulgation with effect from the morning of December the 14th' is misconceived. Under the operation of section 72 of the old Act read with sub-clause (3) of its own clause 1, the ordinance will come into force immediately on promulgation and there is no question of promulgating it 'with effect from' any particular day or time of day. Incidentally, it is quite certain that if the ordinance is sent to the Press for promulgation on the 14th it will not, in fact, be promulgated before the afternoon of that day.

G.H. Spence
Home Department

- A. I have had Sir G. Spence's amendments and I hope we have interpreted them correctly.
- B. My draft about the wording of clause 3 (4) was based on a rather hazy recollection of the noting at pp. 66-70 on the D.D. File Nos DC(6)/43. But I am afraid I don't quite understand how it is relevant to say (with respect to a clause in a new ordinance) that this change has been made with a view to attracting section 3 of the Defence of India Act.
- C. As regards in G. Spence's amendment in para 5 of the draft and his marginal comment thereon the sentence refers both to the action required under sect 7 and also to reporting cases to the provincial Government. Is not a reference to sect 8 therefore relevant.

R. Tottenham
27.11.43

Sir G. Spence (Legislative Dept.)

'A' on pre page — 'The first sentence of paragraph 2 of Mr Sundaram's note dated the 6th October' refers to paragraph 17 of Bose J.'s judgement and is expressed in terms of the general rules or instructions contained in the various Security Prisoners Orders because Bose J.'s observations were directed to the general rules or instructions in force in the Central Provinces. The sole point was and is that determinations under sub-rule (5) of rule 26, whether specific or embodied in general rules or instructions, do not possess the status of orders for the purposes of the Defence of India Act and the sole object and effect of the switch to the general or special order terminology is to secure the status of orders for the purposes of the corresponding provisions of the draft ordinance.

'B' on pre page. This was of course a slip on my part for which I apologize. The last sentence in the slip attached to paragraph 3 of the draft may be amended to read as follows:

'This change has been made in view of the fact that, as has been held judicially, determinations under sub-rule (5) of rule 26 do not possess the status of orders for the purposes of sections 3 and 16 of the Defence of India Act and the effect of the change in terminology will be to confer the status of orders for the purposes of sub-clause (9) of clause 3 and clause 10 of the proposed ordinance.'

'C' on pre page. If Sir Richard Tottenham will refer to the concluding words of the proviso to sub-clause (2) of clause 6, he will I think be constrained to agree that clause 8 has no conceivable application to the subject matter of the relevant portion of paragraph 5 of the draft. It might conduce to lucidity if the relevant sentence in paragraph 5 of the draft were recast to read as follows:

Under the operation of clause 7 read with sub-clause (2) of clause 6 the obligation to furnish grounds as soon as may be will fall to be discharged in the case of a pre-existing order made in pursuance of a delegation under sub-section (5) of section 2 of the Defence of India Act, by the officer who made the order, and the officer should without delay forward any representation received as the result of the furnishing of grounds to the provincial Government for disposal in accordance with proviso to section 9.

G.H. Spence
Home Department
29.11.43

I spoke to H.M. about this case . . . now submit the file with the draft letter to Provincial Governments and a draft summary for H.E.'s orders. I have ascertained that there will be a Council meeting at 10.30 a.m. on Wednesday, December 1st. I will file any further replies from Governors received by H.M. So far there is only the reply from Sir Andrew Clow to which I have referred in the summary.

29.11.43
(R. Tottenham)
Addl. Secretary

H.M.

I was prepared to accept Addl. Secy's summary and draft, but in the meanwhile I received from him the letter of the 26th November¹¹ from the Secretary to the Governor of Bengal. The points raised in that letter may not be very material but they will have to be examined and it is beginning to be evident that we shall get into trouble over this Ordinance unless we give the Provinces opportunities of raising any points of doubt they feel about the drafting and of bringing to notice any particular administrative difficulties in regard to which we might perhaps ease their position. We could have done this under our original time-table but the attempt to bring out the Ordinance by the 14th December would make it impossible. I am inclined to think, therefore, that we shall have to abandon the attempt to promulgate the Ordinance by the earlier date and give the Provinces time to comment on the draft Ordinance. If this procedure will give some inconvenience to the Bengal Government with regard to their *habeas corpus* applications we cannot help it. I think we might still consult Provincial Governments and have their replies in time to issue the Ordinance by the 1st January or soon after, but we must give a definite date by which their replies must be received here in order to allow us time to study their points. On this plan the draft letter to Provincial Government will need a few slight modifications, e.g., in the last sentence of para 2 and in para 8. We should, I think, make it clear that we do not desire comments on the principle of the proposals, but that we wish to give them an opportunity of bringing to notice points of the kind which I have mentioned above. (This in fact is what the Bengal Governor's Secretary has done.) I think, perhaps, it would still be useful if His Excellency would agree to round off the matter in Council by mentioning it at the next meeting and explaining what we propose to do. When

the principles were thus fully accepted the adjustment of details could be left to us in consultation with the Provinces. The summary would then need slight modification also; but if Addl. Secy. cannot find time for this before the Council meeting the matter could perhaps remain over until the next Council meeting, P.S.V. being so informed.

29.11.43

R.M. MAXWELL

I have spoken to H.M. and have revised the draft to Provincial Governments and the summary for H.E. H.E. need not, I think, bother to read the draft to Provincial Governments, which repeats the substance of the note already circulated to Governors. The chief point for consideration is whether H.E. would be able to mention the case in Council tomorrow morning as suggested in para 3 of the summary.

30.11.43

(R. Tottenham)

Addl. Secretary

- 1 and 2. Refers to a preceding Note "The decision taken in Council on the 10th instant calls for further examination of (1) questions of detail including the question whether the provision for six monthly review should be 'retained'. (2) The Simultaneous treatment of the category of detenus referred to in paragraph 7 of the summary. (3) Has been dealt with in para 2 of H.M.S. note dated 12th Nov. 1943 (See Doc. 119). As regards (1) we must first await the opinions of the Provisional Governors, if any, on the draft ordinance as a result of the note on page 87 ante'.
3. Doc. 125.
- 4, 5, 6 & 9. Refers to the draft letter which is not printed
- 7 Doc. 108.
- 8 Doc. 5.
10. Doc. 128.

128: Government of Bengal to the Government of India (new ordinance)

File No. 44/57/43 – Home Poll (I)
[NAI]

Government House,
Calcutta
26th November 1943

Dear Sir Richard,

When I saw you in Delhi on the 20th November, 1943, I mentioned that His Excellency the Governor was in general agreement with the provisions of the proposed Restriction and Detention Ordinance, 1943. It does not appear that the Provincial Government have again been consulted officially in regard to the promulgation of this Ordinance, but His Excellency has shown it privately to Porter, who deals with matters relating to persons detained under

rule 26 of the Defence of India Rules, and as a result of consultation with him, the following for consideration:

- (1) Clause 5 contains no provision for the delegation of the powers conferred by clause 4, and in consequence a direction under clause 4 can be given only in respect of a person against whom an order under clause 3 has been made by Government itself. No direction under clause 4 can therefore be given in respect of a person against whom an order has been made in the exercise of delegated authority. This is a loophole which might well be closed.
- (2) For the reasons stated respectively in paragraphs 3 and 6 of Porter's letter No. 517, dated the 3rd July, 1943,¹ addressed to Bartley, it seems doubtful whether the provisions of clause 3(4) and clause 12 can be regarded as satisfactory.
- (3) It also seems doubtful whether the provisions of clauses 6 and 10(2) will suffice to obviate the difficulty which confronts us in respect of orders, purporting to have been made under D.I.R. 26, but declared by Courts not to have been so made because of non-compliance with the provision requiring that Government must be satisfied that such orders were necessary. It would seem still to be essential to submit, for the consideration of His Excellency, all orders already issued which have not yet been reviewed by him.
- (4) The application of clauses 7 and 9 will be difficult in the case of 'politicals' who are members of secret subversive organisations. It will not be easy to furnish them in useful form with grounds for their detention without uncovering sources whose usefulness and existence may be thereby endangered; and as there are upwards of 1400 such prisoners, the time taken to produce statements will be considerable and may give rise to allegations of unnecessary delay. The same difficulty arises in regard to the necessity for reviewing orders every 6 months, and even if detention for an indefinite period cannot be any longer permitted, it is suggested that instalments of 12 months will be more satisfactory than instalments of 6. In addition to the 'politicals', we also have about 3000 'Goonda' security prisoners, and although it would be simple enough, by reference to their previous convictions, to furnish them with grounds for their detention, the application of clauses 8 and 9 to such a large number of cases would entail a very great deal of additional labour.

2. It is appreciated that these points have probably been considered already, but it is felt desirable that full account should be taken of its problem which they present.

E.B.H. Baker
Home Department

1. Not printed.



129: New summary for His Excellency – Home Department

File No. 44/57/43 – Home Poll (I)
[NAI]

Subject: Proposed Ordinance to replace Rule 26 of the Defence of India Rules

This proposal was approved at the Council meeting held on November 10th, subject to further examination of:

- (1) questions of detail including the question whether provision for six-monthly review should be retained; and
- (ii) the simultaneous treatment of the category of detenus referred to in paragraph 7 of the previous summary, i.e.,¹ persons who had to be detained for military reasons.

As regards (1) above, the opportunity of the Governors' presence in Delhi was taken to circulate to them a note on the subject with the intimation that their views, if any, should be communicated to the Home member. The Home Member has only received one reference (from the Governor of Assam)² which expresses the hope that his Government will be given an opportunity of commenting on the proposed Ordinance before it is promulgated. One or two Governors intimated while they were in Delhi that they saw no objection in principle to the Ordinance and the Governor of Bengal went so far as to press that it should be promulgated before December 15th, which is the date on which certain *habeas corpus* applications, with references to D.R. 26, will come up for hearing in Calcutta. A letter has, however, just been received from the Secretary to the Governor of Bengal³ raising various points that will require examination and will render it impossible to promulgate the Ordinance so early. It is possible that comments from other Governors (notably N.W.F.P. and Bombay) may also be received on certain points of detail.

As regards (ii) above, the War Department has prepared the draft of an Ordinance, which has been accepted by the Home and Defence Departments and which is now under consideration with the Legislative Department. The War Department anticipate no difficulty in having this Ordinance ready for promulgation in the near future.

2. In these circumstances, the Home Department would like to go ahead with the Ordinance on the lines originally proposed, but they think Provincial Governments must be given a chance to raise any points of doubt they feel about the drafting of the Ordinance and to bring to notice any particular administrative difficulties in regard to which it might be possible to ease their position. A draft to Provincial Governments has been prepared accordingly and is ready for issue. It has been accepted by the War and Legislative Departments. It asks for replies before the end of December with a view to the promulgation of the Ordinance on January 7th, which seems the earliest possible date by which examination can be completed.

3. At the last meeting of Council H.E. intimated that the case would be placed before Council again after further discussion on the points mentioned. It would seem hardly necessary to enter the item formally on the agenda. H.F. may consider it sufficient to mention the matter informally at the next meeting on December 1st, explaining that he had had further consultations

with the Home Member and the Commander-in Chief and that he had also taken the opportunity to provide Governors while they were in Delhi with a note on the whole subject. If approved, H.E. could then say that he was satisfied that the case might proceed on the basis of the proposals made by the Home Member and generally accepted by Council and he, therefore, proposed that the Home Department should address Provincial Governments immediately with a view to the promulgation of the Ordinance as early as possible.

30.11.43
(R. Tottenham)
Addl. Secretary

P.S.V.

All right
Wavell
30.11.43

- 1 Not printed.
- 2 Doc 126.
- 3 Doc 128.

130: R. Tottenham's Note on the maximum duration of interrogation of security prisoners – (dt 30.11.1943)

File No. 44/2/43 – Home Poll (I)
[NAI]

The draft to Sind may be issued if DIB agrees. I don't think any reply to Punjab is necessary at present. Developments in the J.P.N.¹ *habeas corpus* application may be availed and also the issue of our new ordinance. H.M. does not insist that all interrogation should be completed when a man is in police custody under DR 129 that is to say he contemplates that it may continue after an order under DR 26 has been issued. But he thinks the total length of interrogation in any one case should not exceed two months.

DIB may have some comments to make.

R. Tottenham,
30.11.43

1 Jai Prakash Naram – Ed.



131: Piare Dusadh and others – Appellants v. Emperor (Spens C.J. Vardadachariar and Zafrulla Khan J.J.) (1 Dec. 1943)

AIR, Vol. 31, 1944, Federal Court, pp. 1–
(From: Patna, Nagpur, Allahabad and Madras)

Criminal Appeals Nos 35 to 47, 49 to 54 of 1943.

Sardar Raghbir Singh, Advocate, Federal Court, instructed by S. Ranjit Singh Narula, Agent in 35, 36 and 37); S. Raghbir Singh, Advocate, Federal Court (Raghunath Jha, Advocate, Federal Court (Raghunath Jha, Advocate, Federal Court, with him), instructed by Gurudayal Sahay, Agent (in 38); T.K. Prasad, Advocate, Federal Court, instructed by S. Ranjit Singh Narula, Agent (in 39, 50 and 52); A.C. Sinha, Advocate, Federal Court, instructed by Gurudayal Sahay, Agent (in 40 and 42); Bhabananda Mukerjee, Advocate, Federal Court (in 41); R.N. Padhye, Senior Advocate, Federal Court (Ramditta Mall and R.K. Manohar, Advocates, Federal Court and G.G. Ghate, Advocate, Nagpur High Court, with him), instructed by Naunit Lal Chilkara, Agent (in 43, 44 and 45); J.P. Dwivedi, Senior Advocate, Federal Court, with him), instructed by Naunit Lal Chilkara, Agent (in 46); S. Raghbir Singh, Advocate, Federal Court (for K.K. Raizada, Advocate, Federal Court), instructed by Tarachand Brijmohanlal, Agent (in 47); S. Raghbir Singh, Advocate Federal Court, instructed by Radhe Rawan Bhargava, Agent (in 53) and Harish Chandra, Senior Advocate, Federal Court, (R.K. Manohar, Advocate Federal Court, with him), instructed by Naunit Lal Chilkara, Agent (in 54) – for Appellants.

Mahabir Prasad, Advocate, General of Bihar (Yasir Yunius, Advocate, Federal Court, with him) instructed by S.P. Verma, Agent (in 35 to 442, and 50 to 52); Hidayat Ullah, Advocate-General of C.P. and Berar (Kaushalendra Rao, Advocate, Federal Court, with him) instructed by B. Banerji Agent (in 43 to 46); Dr Narain Prasad Asthana, Advocate General of the United Provinces (Bajjnath Sahai, Advocate, Federal Court, with him), instructed by Sumair Chand Jain Raizada, Agent (in 47, 53 and 54) and Sir Alladi Krishnaswami Ayyar, Advocate-General of Madras (N. Rajagopala Iyengar, Advocate, Federal Court, with him), instructed by Ganpat Rai, Agent (in 49)–for the Crown.

Sir Brojendra Mitter, Advocate General of India (H.K. Bose Advocate, Federal Court, with him), instructed by K.Y. Bhandarkar, Agent; Sir Alladi Krishnaswami Ayyar, Advocate-General of Madras (N. Rajagopala Iyengar, Advocate, Federal Court, with him), instructed by Ganpat Rai, Agent and N.P. Engineer, Advocate-General Bombay (M.M. Desai, Advocate, Federal Court, with him), instructed by B. Banerji, Agent–Appeared in response to notices issued under 0.36, R.1 of the Federal Court Rules, 1942.

Spens C.J. – These appeals (from judgments of different High Courts) were heard together, as they raised common questions of law. The appellants had been convicted by Courts functioning under the Special Criminal Court Ordinance (Ordinance 2 of 1942). On 4th June 1943, this Court (by a majority) held that the Courts constituted under that Ordinance had not been duly invested with jurisdiction, in view of the nature of the provisions contained in SS.5, 10 and 16 of that Ordinance. The next day, the Governor-General made and promulgated another Ordinance (Ordinance 19 of 1943) whereby Ordinance 2 of 1942 was

repealed and certain provisions (to be referred to presently in detail) were made in respect of sentences which had been passed by the special Courts and in respect of cases which were pending before them on that date. By sub-s. (2) of S.3 of the new Ordinance, a right of appeal against sentences which had already been passed by the special Courts was given and appeals were accordingly preferred to the High Court in some cases. In certain other cases, applications for a writ in the nature of habeas corpus were made. In both sets of cases, it was contended on behalf of the accused that the new Ordinance did not, and in any event could not, give validity to the sentences which had been passed by the special Courts, and it was claimed that the sentences should be treated as void or set aside without any examination of the merits of the case, and that the accused should, if necessary, be directed to be tried by the ordinary criminal Courts in due course of law. The various High Courts which had to deal with the cases that have now come up before us declined to accede to this contention, though in the Allahabad High Court one learned Judge (Bajpai J.) dissented. The habeas corpus applications were dismissed and in some instances the appeals were also dismissed on the merits. In the cases from Nagpur, the High Court pronounced a preliminary judgment in the appeals, overruling the appellants' contentions on the points of law above referred to and gave a certificate under S.205, Constitution Act, even before the appeals had been finally disposed of. It may be a question whether it is proper to entertain an appeal merely against the preliminary judgment. It may also be a question whether the validity of Ordinance 19 of 1943 can be challenged in an appeal preferred under and by virtue of the Ordinance itself. Such objections were however not raised by counsel for the Crown and as the points of law had in any event to be decided in the habeas corpus cases, we permitted the questions of law to be argued on behalf of all the appellants. It may be mentioned that among the High Courts whose decisions are not directly now before us on appeal but which we have had to consider, the Bombay High Court upheld the validity of the Ordinance and placed on it the same interpretation as had been adopted by the High Courts at Allahabad, Madras, Nagpur and Patna. In the Calcutta High Court, two learned Judges (Derbyshire C.J. and Khundkar J.) placed the narrower interpretation on the impugned provision of the Ordinance rather than hold it to be invalid; Sen J. held the Ordinance to be invalid.

It will be convenient to set out here the material provisions of the new Ordinance. Section 2 repealed the earlier Ordinance and S.5 provided an indemnity for all officers, judicial or executive, in respect of what they had done under the repealed Ordinance. Section 4 provided that

where the trial of any case pending before a Court constituted under the said Ordinance has not concluded before the date of the commencement of this Ordinance, the proceedings of such Court in the case shall be void and the case shall be deemed to be transferred to the ordinary criminal Courts for enquiry or trial in accordance with the Code of Criminal Procedure.

Section 3 is in the following terms:

3. Confirmation and continuance, subject to appeal, of sentences. — (1) Any sentence passed by a Special Judge, a Special Magistrate or a Summary court in exercise of jurisdiction conferred or purporting to have been conferred by or under the said Ordinance shall have effect, and subject to the succeeding provisions of this section shall continue to have effect, as if the trial at which it was passed had been held in accordance with the Code of Criminal Procedure, 1898 (V of 1898), by a Sessions Judge, an Assistant Sessions Judge or a Magistrate of the first class respectively, exercising competent jurisdiction under the said Code.

(2) Notwithstanding anything contained in any other law, any such sentence as is referred to in sub-s.(1) shall, whether or not the proceedings in which the sentence was passed were submitted for review under S.8, and whether or not the sentence was the subject of an appeal under S.13 or S.19, of the said Ordinance, be subject to such rights of appeal as would have accrued, and to such powers of revision as would have been exercisable under the said code if the sentence had at a trial so held been passed on the date of the commencement of this Ordinance.

(r) Where any such sentence as aforesaid has been altered in the course of review or on appeal under the said Ordinance, the sentence as so altered shall for the purposes of this section be deemed to have been passed by the Court which passed the original sentence.

Two lines of argument have been advanced on behalf of the accused: first, it was said that on a reasonable construction of all the provisions of ordinance 19, it could not have been intended to, and did not, in fact, give validity to the sentences passed by the special Courts, but only gave them a kind of provisional regularity of existence till they were brought before a Court of appeal or revision by whom they were expected to be immediately set aside on the ground that they had been passed without jurisdiction. Secondly, it was contended that if the Ordinance sought to give validity to those sentences, it was beyond the competence of the Governor General to enact it. To appreciate and assess the force of these contentions, it is necessary briefly to advert to the provisions of Ordinance 2 of 1942 and to the precise terms of the judgment pronounced by this Court in relation to their operation. The Ordinance was promulgated under S.72 of Sch.9, Constitution Act which empowers the Governor-General 'in cases of emergency' to make and promulgate Ordinances for the peace and good government of British India or any part thereof. The Ordinance accordingly recited that an emergency had arisen which made it necessary to provide for the setting up of Special Criminal Courts. Sub-section (3) of S.1, however, enacted that the Ordinance should come into force in any Province only if the Provincial Government (being satisfied of the existence of an emergency arising from a hostile attack, etc.), should by notification declare it to be in force in the Province. This way of framing the Ordinance gave rise to a contention that it had not been enacted in accordance with and in circumstances contemplated by S.72. This point was left open in the previous judgment of this Court. The Ordinance proceeded to empower the Provincial Governments to constitute certain classes of Special Courts, defined the classes of persons who could be appointed to those Courts, specified the sentences which each of those Courts was authorized to impose, prescribed certain special rules of procedure for the conduct of trials before those courts and to that extent excluded the application of the provisions of the Code of Criminal Procedure. It also made provision for appeals in certain classes of cases and a special provision for what is spoken of as 'review' in certain other cases and completely excluded the jurisdiction of the High Court: either as a Court of appeal or revision or as a Court exercising powers under S.491 or S.526, Criminal P.C. As the Courts created under the Code of Criminal Procedure continued to function alongside of these Special Courts, an attempt was made by Ss.5, 10 and 16 of the Ordinance to define the cases or classes of cases that should be tried by the special courts under the Ordinance and not by the ordinary Courts in the ordinary way. It was enacted that they should try such offences or classes of offences or such cases or classes of cases as the Provincial Government or certain executive officers may, by general or special order in writing, direct.

The validity of Ordinance 2 of 1942 and the legality of sentences passed by Courts functioning under that Ordinance were questioned before all the High Courts and all but the Calcutta High Court held the Ordinance to be valid and the sentences to be legal. The Calcutta

High court however took a different view and directed the release of persons who had been sentenced by the Special Courts subject of course to their liability to be tried before the ordinary Courts. It was on an appeal by the Crown against this judgment of the Calcutta High Court that the matter came before this court in May/June 1943. This Court (by a majority judgment) held that so long as the code of Criminal Procedure had not been repealed or validly and effectively excluded, a trial for any crime could only be held by a Court constituted under the Code and in accordance with the procedure therein prescribed. It further held that it was only by a legislative provision that the Courts constituted under the Ordinance could be invested with jurisdiction to hold a criminal trial, and that Ss.5, 10 and 16 which left it entirely to the executive authorities to determine what cases should be tried by the regular Courts and by the special Courts respectively, were not valid legislative provisions and that they were accordingly inoperative either to divest the regular criminal Courts of their jurisdiction or to invest the Special Courts with jurisdiction. It also pointed out that the powers of the High Court were only taken away by the executive orders under Ss.5, 10 and 16 and that this was not permissible in view of S.223, Constitution Act. It was, however, expressly stated in that judgment that there could be no suggestion that the Ordinance was ultra vires the Governor-General on the ground that its subject-matter lay outside his Ordinance making powers. There could be no doubt that by a properly framed Ordinance the Governor-General could have constituted Special Courts, invested them with jurisdiction to try specified cases or classes of cases and prescribed the procedure to be followed by them in the trial of such cases even to the exclusion of material provisions of the Code of Criminal Procedure. Whatever opinion might be held as to the expediency of curtailing the safeguards enacted by the Code to ensure a fair trial, no doubt could be cast upon the competence of the Ordinance-making authority to restrict or even remove any of these safeguards: see (1885) 10 A.C. 675.

The arguments now urged before us on behalf of the appellants were based on two assumptions, (i) that Ordinance 19 of 1943 had been enacted on the admitted footing that Ordinance 2 of 1942 was void and inoperative and (ii) that the new Ordinance attempted to do something which this Court had held that the Ordinance making authority had no power to do. Neither of these assumptions seems to us to be justified. The situation as it stood on 5th June 1943, was as follows: The Calcutta High Court and two Judges of this Court had held that Ss.5, 10 and 16 of the Ordinance were not the proper way of investing the Special Courts with jurisdiction. All the other High Courts in India and one Judge of this Court had taken a different view and this Court had granted leave to the Government to take the matter on appeal to His Majesty in Council. The government had however to make immediate provision for the numerous cases which had before that date been decided by the Special Courts in the various Provinces and in respect of the cases which were at the time pending before those Courts. It would have been scarcely reasonable to keep the whole position problematical till the matter could be decided by the Judicial Committee. It must have seemed equally unreasonable to ignore the judgment of this Court. A solution in the nature of a compromise between the two extreme positions seems to have been thought to be the best in the circumstances. As regards pending cases, the best that could be done in the light of this Courts judgment was to direct them to be tried by the regular Courts. It would no doubt have been possible to continue the Special courts by reframing Ss.5, 10 and 16; but this court had also strongly commented on the provisions excluding the jurisdiction of the High Court. As regards cases where sentences had already been passed by the special Courts, it would have been a serious demand on public time, not to speak of public funds, to think of the

retrial of all the accused who had been thus sentenced, as their number must have been very large. Nor could it be assumed that it would in all cases have been to the interest of the accused themselves to be retried, if they could in some other way be given an opportunity of showing that their conviction was not justified. In view of this Court's observations on the policy of excluding the High Court's jurisdiction, it was apparently felt that the best thing to do in the circumstances was to maintain the convictions, but to allow them to be questioned by way of appeal and revision as provided by the Code of Criminal Procedure. Whether it was competent to the Ordinance making authority to make these provisions or not is not the question, when we have to interpret the provisions of the Ordinance. It may be that when there are two possible constructions, one of which will make the enactment void and the other give it some effect, the latter may have to be preferred, though it may not wholly achieve the purpose of the framers. But in the view that we take on the question of the validity of the Ordinance, no such difficulty arises in the present case. It is not right to assume that Ordinance 19 admitted that Ordinance 2 of 1942 was void. On that assumption, even its formal repeal would not have been necessary, further, it is not easy to reconcile the provisions of sub-Ss. (1) and (2) of S.3 with that assumption. Even S.4, which declares pending trials before the special Courts void, does not necessarily import that the previous Ordinance was void, it only shows that Government preferred to have the pending cases tried by the regular Courts rather than hold them up till the question of the operativeness of Ordinance 2 of 1942 was decided by the Privy Council.

It was strongly insisted that sub-s. (1) of S.3 did not use familiar words like 'validation' or 'confirmation,' though the word 'confirmation' is used in the heading. The question has however to be determined by a consideration of the words actually used and not by speculation as to why other words had not been used. It had to be admitted on behalf of the accused that some kind of operativeness had been given by S.3 (1) to the sentences that had been passed by the special Courts, but it was said that this was only to the extent required to make proceedings by way of appeal or revision possible. And, as the formality of an appeal or revision need not have been insisted on if the Legislature had proceeded on the assumption that the sentences were void, it was suggested that it must have been the intention to leave it to the convicted persons either to acquiesce in the sentences or avail themselves of the opportunity given by the Ordinance to get the sentences set aside. It was explained that the cases dealt with under S.3 (1) were not assimilated to those dealt with by S.4, because an accused person who had already been convicted might in some cases prefer to undergo the sentence that had been imposed upon him rather than face a retrial which would be the result if the sentence had been declared void as one passed by a Court which had no jurisdiction. It was also said that having regard to the disabilities imposed on the accused at a trial by the Special Courts, it would not be fair to assume that the Ordinance-making authority intended to confirm sentences passed at such a trial or believed that adequate justice would be done to the accused in such cases merely by giving them a right of appeal or revision on the record as it stood. We are not satisfied that there is much force in these arguments. In our opinions they do not give due effect to the language of sub-ss.(1) and (2) of section 3.

Sub-section (1) of S.3 requires the sentence to be treated as if (1) 'the trial at which it was passed had been held in accordance with the Code of Criminal Procedure', (2) by an officer 'exercising competent jurisdiction under the said code.' It is obvious that these two groups of words were employed for the purpose of meeting the two requirements insisted on by this court in the previous judgment, namely, that so long as the Criminal Procedure Code had

not been effectively excluded, the trial must be held in accordance with the Code and by Courts having jurisdiction under the Code. The suggestion that they might have been put in to indicate the classes of cases where remedies should be sought by appeal and revision respectively is unconvincing. The purpose would have been achieved even by the remaining words found in the section, namely, as if 'they had been passed by a Session Judge, an Assistant Sessions Judge or a Magistrate of the First class respectively.' That the purpose of this section was to indicate not merely the forum but also the nature and extent of the relief to be had is made clear by sub-s.(2) which subjects the sentence 'to such rights of appeal as would have accrued and to such powers of revision as would have been exercisable under the code' and then repeats the words 'if the sentence had at a trial so held been passed.' 'At a trial so held' obviously means, as set out in sub-s.(1), a trial held in accordance with the Code and by a Court having competent jurisdiction under the Code. As sub-s.(2) gives the right of appeal and the power of revision only on this hypothetical footing, the appellate or revisional authority cannot ignore this basic postulate and give relief on the very ground that the trial had not been held under the Code or before a Court exercising competent jurisdiction under the Code. If S.3 (1) gives any validity at all to the sentences that had been passed by the Special Court there is nothing to limit such validity up to the time that the sentences are appealed against. As for the argument based on the improbability of an intention to confirm sentences passed at trials which were characterized as unfair to the accused, it seems to us incorrect to assume that the authority which enacted Ordinance 19 would have thought that the procedure prescribed by itself in Ordinance 2 of 1942 was not in the circumstances sufficiently fair to the accused. It might well have thought that any hardship even on this score would be remedied by allowing the right of appeal or revision. It was only reasonable to expect that if the appellate or revisional authority found reason to think on going into the merits that the accused had been prejudiced by the nature of the trial, would set things right. But this is different from saying that the appellate or revisional authority should automatically set aside the sentence merely on the ground that the accused had not been tried in accordance with the Code. It has been suggested that the right of appeal would in the circumstances be illusory. We are by no means satisfied that that would be so. We see no justification for importing a fictitious or notional 'trial by jury' and on that assumption limiting the powers of the appellate court. Even this possible doubt has been removed by ordinance 32 of 1943, which allows a right of appeal both on questions of fact and on questions of law. In any event, questions of fairness or policy are not matters which the Court can take into consideration when the language of the enactment leaves little or no room for doubt.

It has been further contended that as S.4 proceeds on the footing that the trials before the Special Courts were void, consistency requires that S.3 also must be interpreted on the same assumption. It was even said that any other view would make the provisions of the Ordinance illogical and self contradictory. It is difficult to follow this argument. It seems to us that on this basis there would have been no need to make separate provisions for the two classes of cases respectively dealt with the Ss.3 and 4. Even S.4 cannot be said to have proceeded on the assumption that the trials before the Special Courts were void. On the principle embodied in S.6 (e), General Clauses Act, the result of the repeal of an enactment on cases pending at the time of the repeal would be that they would continue as if the enactment had not been repealed. But this is subject to the qualification that the repealing enactment contains no provision or indication to the contrary. It was open to the Government to insist that in spite of the decision of this Court on the last occasion, cases pending before

the Special Courts at the time should continue to be tried before them, in the expectation that the Judicial Committee might take a different view as to the operation of Ordinance 2 of 1942. This would have been the position even after the repeal, if the matter had been allowed to rest upon S.6 (2), General Clauses Act. But apparently as the Government were not prepared to adopt that attitude, they have enacted S.4 in its present terms. As already explained, there is sufficient reason for making a distinction between cases dealt with by S.3 and cases dealt with by S.4 and there is no illogicality or contradiction involved in such distinction. A point has been made that S.3 (1) seeks to give validity only to the sentence and no to the conviction. Nothing turns on this, because the section requires the sentence to be treated as one passed by a competent Court at a proper trial. On this footing no separate provision referring to the 'conviction' was necessary.

In arguing the question as to the validity of the Ordinance, counsel for the accused recognised that the principle of validation by subsequent legislation was quite as applicable to judicial as to ministerial proceedings. This is expressly so stated in the very passage on which they relied from Cooley's 'Constitutional Limitations' Extn.B, P. 205 (see also pp. 773-6). They laid stress on the author's statement as to the limitations on that power and contended (1) that the Ordinance had sought to give validity to what the Ordinance-making authority could not have authorized even by antecedent legislation; (2) that while such legislation might seek to aid and support judicial proceedings, the Legislature could not under the guise of legislation be permitted to exercise judicial power, and (3) that it was not competent to the Legislature by retrospective legislation to make valid any proceedings which had been held in the Courts, but which were void for want of jurisdiction over the parties. The first of these limitations is without doubt recognised in the English law: see per Willes J. in (1870) 6 Q.B. 1 at p. 17. In support of limitations (2) and (3), Cooley cites the decisions in 19 LLL.226 and 2 ALLEN. 361 see also 19 Am. Rep. 656.

The argument with reference to the first limitation was based on the assumption that Ordinance 19 sought to validate the very delegation of power to the executive which was attempted by Ss.5, 10 and 16 of Ordinance 2 of 1942 and which, it was held by this court in the previous case, could not be validly done. This assumption is, in our opinion, unwarranted. The expression 'what could have been antecedently authorized' implies that this had not as a matter of fact been done previously. In the circumstances of this case that could not be said of the delegation of power to the executive authorities, because that had, in fact, been done by Ss.5, 10 and 16 of the previous Ordinance. It is the acts of the Special Courts in trying cases and passing sentences as they had done that had not in fact been duly authorized on the previous occasion and it is those acts that are now sought to be declared valid. The enquiry under this head must therefore be whether the Ordinance-making authority had power (if only it had properly exercised such power) to create these special Courts and authorize them to try cases and pass sentences. On the existence of such power no doubt was cast by this court on the previous occasion and it has not been denied even by counsel for the accused in these cases. There is accordingly no substance in this objection. In this view, no question arises of the legislating authority attempting to do indirectly what it could not do directly. We were in this connexion invited to express a definite opinion on the point which we had left open in (1943) 6 F.L.J. F.C. 79 viz, whether Ordinance 2 of 1942 was promulgated on a declaration of emergency of the kind contemplated by S.72 of Sch.9. We do not see that it would make any difference to the decision of the present question even if Ordinance 2 of 1942 should be held to have been inoperative on that ground; that would not imply the

absence of power in the Governor-General, but would only involve the conclusion that the power had not been properly exercised on the previous occasion.

Turning to the other two objections referred to above, it is necessary to consider how far they rest upon peculiarities of the American Constitution. As a general proposition, it may be true enough to say that the legislative function belongs to the Legislature and the judicial function to the judiciary. Such differentiation of functions and distribution of powers are in a sense part of the Indian law as of the American law. But an examination of the American authorities will show that the development of the results of this distribution in America has been influenced not merely by the simple fact of the distribution of functions, but by the assumption that the constitution was intended to reproduce the provision that had already existed in many of the State constitutions, positively forbidding the legislature from exercising judicial powers: [see paras 520 et seq. in Story's 'Commentary on the Constitution of the United States']. The reasons contained in the passages cited from the 'Federalist' in paras 1585, etc., of Story and the quotation from Mr Tucker in the foot-note to para 1637 will explain the development of the American rule. In one case, it was observed:

It is a fundamental principle that every person restrained of his liberty is entitled to have the cause of such restraint enquired into by a judicial officer. The judicial department of the Government cannot by any legislation be deprived of this power or relieved of this duty. [103 Am. St Rep. 944, quoted in the foot-note on page 185 in Cooley's 'Constitutional Limitations'].

This view is partly based on considerations which will be discussed when dealing more specifically with the third objection. One result of the application of this rule in the United States has been to hold that 'legislative action cannot be made to retract upon past controversies and to revise decisions which the Courts in the exercise of their undoubted authority have made'.

The reason given is that

this would not only be the exercise of judicial power, but it would be its exercise in the most objectionable and offensive form, since the Legislature would in effect sit as a Court of review to which parties might appeal when dissatisfied with the rulings of the courts. [See Cooley's 'Constitutional Limitations', page 190].

In India, however, the legislature has more than once enacted laws providing that suits which had been dismissed on a particular view of the law must be restored and retried. Two well-known instances are S.31 (2), Limitation Act, 1908, which provided for the restoration of suits dismissed on the ground that the 12 years' period of limitation under Article 132, Limitation Act applied to suits for sale by holders of simple mortgages and the Public Suits Validation Act (11 of 1932) which provided for the restoration of suits dismissed on a particular interpretation of S.93, Civil P.C. Again, debt relief legislation in the various provinces has provided even for the reopening of decrees passed inter parties. In view of the history of the rule in America, it is questionable whether it would be right to apply the same rule in this country. Further, the American authorities themselves show that, even in the United States, limitations had to be placed on the strict American rule and that it was not found possible to differentiate by a clear-cut definition the exercise of legislative power from the exercise of judicial power. [See Willi's 'Constitutional Law of the United States', p. 142.]

An Australian case (1931) 38 com. L.R. 153, to which we were referred by the Advocate-General of India, bears some resemblance to the present case. An Act of 1922 had constituted a Board of Appeal to deal with appeals in income-tax matters and this Board had given certain

decisions. But the law courts declared that the Australian Parliament had no power to invest this Board of Appeal with judicial power. A later Act established what was described as a Board of Review and assigned to it functions which were held to be different in character from those assigned to the former Board of Appeal. It, however, went on to provide that decisions which had already been pronounced by the Board of Appeal 'should be deemed to be and at all times to have been decisions of a Board of Review given in pursuance of the provisions of the later Act'. The later Act was also challenged as vesting judicial power in the Board of Review, but this contention was overruled. The validating provision in the later Act was next challenged as constituting 'an attempt by Parliament itself to exercise the judicial power of the Commonwealth.' The answer to this argument is relevant here. One learned Judge (Isaacs J.) interpreted this provision as implying a 'retrospective creation' of the Board of Review and placing the decisions of the old Board of Appeal on the same footing as they would be on if the now existing Board of Review had then pronounced them (pp. 173, 174). Another learned Judge (Starke J.) observed:

Parliament simply takes up certain determinations which exist in fact, though made without authority, and prescribes not that they shall be acts done by a Board of Review, but that they shall be treated as they would be treated if they were such acts. The sections, not doubt, apply retrospectively, but they do not constitute and exercise of the judicial power on the part of the Parliament (p. 212).

We think that this latter description is apposite to what happened in the present case and also answers the argument that it is an impossible feat to convert what was not a trial under the Code of Criminal Procedure into a trial under the Code.

Judged by any reasonable test, it seems to us difficult to hold that what the Ordinance has attempted to do in this case amounts to an exercise of judicial power. A passing reference was made in this connexion to S.71 (3), Constitution Act, which precludes the legislative chambers from conferring on themselves 'the status of a Court'. This and the similar provision in S.28 (3) have no bearing upon the present question. They were intended to set at rest the question whether these legislative bodies had the power to punish for contempt. (CF. (1866) L.R. 1.P.C. 328 (1886), 11 A.C.197 and (1896) A.C. 600.) Section 313 (1) which was also relied on in this connexion relates to the 'executive' authority of the Governor-General in Council and not to the 'law making' capacity of the Governor-General. It was contended that once the decisions of the Special Courts were held void for want of jurisdiction, the position in the present case would be nothing different from a sentence imposed by the Legislature directly on each of the accused in all the cases that had been before the special courts. This does not seem to us to be a fair or correct view of the position. The Legislature has not attempted to decide the question of the guilt or innocence of any of the accused. That question had as a matter of fact been decided by tribunals which were directed to follow a certain judicial procedure. The effect of the absence of jurisdiction in these tribunals falls to be considered when dealing with the third objection. For the present purpose, however, we see no justification for importing a fiction that there had in fact been no judicial trial and that it is the legislation that declares the guilt of the accused in all the cases and imposes sentences upon them. It must be remembered that even under the Ordinance, the sentences are in due course subject to appeal to and revision by other regular Courts of the land.

In dealing with the third objection, it is again necessary to examine the basis of the American rule in order to determine whether it can be followed here. It is clear from the American authorities that this limitation has been derived from the interpretation placed by the American

Courts on what are known as the Fifth and Fourteenth Amendments which provide against any person being 'deprived of life, liberty or property without due process of law.' The expression 'due process of law' has been interpreted as referring only to 'judicial process' and as not including legislation, and 'judicial process' was held to imply competence or jurisdiction in the Court and an opportunity for a hearing. As this requirement had been made part of the written constitution, it followed that no enactment passed by a Legislature limited by that constitution could authorize anything in violation of it. [See Willoughby's 'Constitution of the United States', paras 1115 to 1117, 1122 and 1123]. Hence the rule (stated by Cooley) that

it would be incompetent for the Legislature, by retrospective legislation, to make valid any proceedings which had been had in the Courts but which were void for want of jurisdiction over the parties.

The constitutional position in India is different. Comparing the American Amendments with the provisions of the Constitution Act, 1935, it will be seen that the latter contains nothing corresponding to so much of the Amendments as related to deprivation of 'life or liberty' and that even as to 'property' it only requires that such deprivation should be 'by authority of law': see S.299. This does not of course mean that the well-established principle of British jurisprudence as to the sacredness of personal freedom is not part of the law of British India. But as pointed out by Dicey, the rule remains only as a principle of 'private law' and is not a part of the Constitution: [See Dicey's 'Law of the constitution', Edn. 9, p. 203 and Wade and Phillips, 'Constitutional Law.' Edn. 2, p. 354]. While its enactment as an article of the Constitution would have placed it beyond the power of the Indian Legislature to alter it, the position must be different so long as it remains a rule of private law, however cardinal and fundamental: [See Dicey, p. 200, footnote]. The principle of the English law as to personal liberty was stated by Lord Atkin in (1931) A.C. 662 in the following terms:

In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice.

Comparing the language of the American Amendments with this statement of the English rule, it will be noticed that what is required under the English rule is not 'due process of law', but 'legal justification' and such justification may be shown as much by legislation or statutory rules as by production of an order of Court: see (1917) A.C. 260. It does not however follow that Legislatures in India can arbitrarily interfere with the life or the liberty of the citizen, because they have only such powers as have been conferred on them by Sch.7, Constitution Act.

The real question in the present case therefore is whether the Ordinance is covered by any of the entries in Sch.7, Constitution Act. It was not contended that the mere absence of a specific provision about 'validating laws' was by itself of much significance. As observed by this Court in 1940 F.C.R. 110 at p. 136 the power of validation must be taken to be ancillary or subsidiary to the power to deal with the particular subjects specified in the Lists. No question arises in this case as to the distribution of the subjects between the Provincial Legislature and the Central Legislature, because a declaration of emergency under S.102, Constitution Act, has been proclaimed. It was contended that under the terms of S.102 (1) the Legislature could make laws only 'for a Province'. that is, separately for each Province and not for a number of Provinces together. There is no basis for this contention. Under the Interpretation Act, the use of the singular number will in the absence of any indication to the contrary in the context or the nature of the subject, include the plural; the clause has apparently been worded in that

particular form, because it has been enacted as an exception to S.100 (3) which excludes the power of the Federal Legislature 'to make laws for a Province' in certain cases. If the Central authority can make laws for each of the Provinces, there is no principle in insisting that even when a uniform law has to be enacted for each of several Provinces, there can be no single enactment, but that there must be as many enactments as there are Provinces. It was further contended that where, as in this case, a proclamation of emergency under S.102 referred only to a threat 'by war', the Central Legislature could encroach on provincial subjects only in respect of matters necessitated by the war and not in respect of subjects relating to 'internal disturbance.' The words of the section do not justify any such limitation. As regards authorization by the Lists in Sch.7, it seems to us sufficient to say that the subject-matter of the present Ordinance is in our judgment covered by the expression 'administration of justice' in entry No. 1 of List II and the expression 'criminal procedure' in entry No. 2 of List III.

On behalf of the Crown, strong reliance was placed on the decision of the Judicial Committee in (1907) A.C. 93 and of the High Courts in India in 55 Bom. 263 and 60 Cal. 742 and as much controversy raged round them we feel we should refer to them shortly. The decision in 1907 A.C.93 is on the face of it, a strong authority in support of the contention advanced on behalf of the Crown. Their Lordships were dealing with an Act passed by the Natal Parliament which provided that 'all sentences passed by any person administering martial law . . . shall be deemed to be final sentences passed by duly and legally constituted courts of this colony'. It is no doubt true that the matter was then before their Lordships on an application for special leave and it might have been sufficient answer to the application to say that the decision of a martial law authority was not that of a judicial tribunal at all and could not therefore be brought up before their Lordships. But their Lordships nevertheless proceeded to give other reasons in support of their dismissal of the application. The sentences in the judgment which have been particularly relied on by counsel for the Crown run as follows:

An Act of Parliament has been passed in Natal which in terms enacts the legality of the sentences in question and provides that they shall be deemed to be sentences passed in the regular and ordinary course of criminal jurisdiction. This board has no power to review these sentences or to enquire in to the propriety or impropriety of passing such an Act of Parliament. The Act has been assented to by the Governor and having the force of law, is binding on their Lordships.¹

We have been asked to treat this as a complete answer to two of the contentions advanced on behalf of the appellants, namely, that legislation conferring validity on sentences passed by an authority which had no jurisdiction in law is not permissible and that such legislation is in the nature of the exercise of judicial authority. On behalf of the appellants, two grounds of distinction (mentioned in the judgment of Bajorai J.) were relied on. It was said (on the strength of an observation of Mr Brand in his book on the Union of South Africa referred to by Bajorai J.) that under the South African Constitution, the Parliament was supreme and that even in Natal, as in Great Britain, the Courts had no authority to act as interpreters of the Constitution. This was answered by counsel for the Crown by pointing out that whatever might be the position in South Africa after the Statute of Westminster and after certain South African legislation of 1934, the position in 1906, when the Natal legislation considered by their Lordships was passed, was nothing different from that of any other Crown colony, as the Natal Charter of 1856 only contained the usual clause authorizing legislation for the peace and good government of the colony. That the same continued to be the legal position even after the Union of South Africa Act till the enactment of the Statute of Westminster was shown by comparing the decision in

1930 South African L.R. App. Div. 431 with, that in 1937 South African L.R. App. Div. 229. It was next urged by counsel for the appellants that this decision had been treated by certain writers on Constitutional Law only as an authority for the proposition that an English Court could not enter into the propriety as opposed to the legal validity of a colonial statute (Chalmers and Asquith 'Outlines of Constitutional Law', 3rd Edn. p. 203 and Ridges' 'Constitution Law of England', 6th Edn, p. 491) and they asked us to infer therefrom that the question of the validity of the statute had apparently not been argued before their Lordships. On behalf of the Crown, attention was drawn to the report in (1906) 22 T.L.R. 413, where the history of the proceedings of the martial law tribunal in Natal has been set out and the arguments at the Bar at that stage have also been more fully stated and we were asked to say that the same learned counsel who appeared for the petitioner in 1907 A.C.93 could not have omitted to raise the question of validity. Lastly, it was contended that a martial law tribunal was more analogous to an executive authority than to a judicial authority and that the decision was no authority for the contention that a void judgment of a judicial tribunal could be validated by subsequent legislation. Their Lordships, observation is very general and it seems rather difficult to restrict its effect in the way that counsel for the appellants asked us to do.

The decision in 55 Bom.263 is no doubt an authority in favour of the Crown in so far as it held S.11 of the Ordinance then in question to be valid, but there is little discussion of the point there. In 60 Cal. 742 the Court had not to consider the questions arising in the present case. 1920 A.C. 230 which was also cited before us, throws little light on the questions arising here. Their Lordships had not to deal with a question of validation but only with a limited plea of ultra vires based on the exception to S.93 (1), British North America Act, to the effect that the law should not

prejudicially affect any right or privilege with respect to denominational schools which any class of persons have by law in the province at the Union.

Two other grounds of invalidation were suggested, though but faintly. It was said the provisions of the Ordinance were hardly likely to conduce to peace and good government, and were not therefore authorized by S.72 of Sch.9. It is sufficient answer to this to say that the Judicial committee have laid down that this is not a matter for the Courts to investigate. It was next said that S.3 (1) of the Ordinance was retrospective in its operation and that the Governor-General had no power to pass Ordinance with retrospective effect. The question has been discussed at some length in Federal court cases Nos 13 to 21 of 1943 and S.3 (1) of ordinance 19 is no more retrospective in its operation than S.3 of ordinance 14 of 1943 which was then held to be valid. We accordingly hold that S.3 (1) of Ordinance 19 of 1943 confers validity and full effectiveness on sentences passed by Special Courts functioning under the Special Criminal Courts Ordinance (Ordinance 2 of 1942) and that this provision is not ultra vires the Governor-General.

Two questions have arisen in the course of the hearing on the construction of S.4 of the Ordinance. It has been brought to our notice that in some instances (cases Nos 39 and 54 before us) references which had to be made or have been made under S.8 of Ordinance 2 of 1942 had either not been made or had not been disposed of by the Review Judge, when the new Ordinance (19 of 1943) came into operation. A question arises whether such cases fall under S.3 (1) or S.4 of the Ordinance. Section 4 purports to deal with cases of which the 'trials' before the Special Courts had not 'concluded'. The Advocate-General of the United Provinces admitted that the trial could be said to be concluded only when the Judge had

pronounced his judgment (vide the way that the sections are grouped in sub-divisions F.&H. of chap. 23, Criminal P.C.), but he maintained that the 'review' proceedings under S.8 of the Ordinance were no part of the trial. The Advocate-General of Bihar maintained that the trial must be held to have concluded as soon as the case became ripe for judgment (vide chap.26 of the Code which treats the judgment as coming after the close of the trial). Our attention was drawn in this connexion to A.I.R. 1933 Cal.551 and A.I.R. 1938 All.102. The discussion in these cases only confirms what one would have thought even independently of them, viz, that the meaning of the word 'trial' must largely depend on the context and the scheme of the enactment in which it occurs. Though the word may sometimes denote only the recording of evidence, it is obvious that in the context in which it occurs in Ordinance 19 of 1943 it must comprise all stages of the proceeding, including the imposition of the sentence. The contradistinction made by the Ordinance is between cases in which a sentence had been passed by the Special Courts and cases in which no such sentence had been passed, the former falling under S.3 (1) and the latter under S.4. If it should be assumed that the two categories might not be exhaustive and cases might be conceived which even while not falling under S.4 might not fall under S.3 (1), the result would only be that the proceedings in such cases would be void under the former decision of this court and the accused would have to be retried before the regular courts. The cases which are dealt with by cls (a) and (b) of S.8 of Ordinance 2 of 1942 stand on a special footing. The two clauses provide for review of the Special Judge's judgment by one of the Judges of the High Court nominated by the Provincial Government. The cases which are dealt with by cls (a) and (b) of S.8 of Ordinance 2 of 1942 stand on a special footing. The word 'review' does not appear to have been used in any technical sense there, but it obviously differs both from a review as understood in the Civil Procedure Code as well as an appeal, because these proceedings are ordinarily initiated by the party concerned. The scheme of S.8 of Ordinance 2 of 1942 is that in the more serious classes of crimes therein referred to, the sentence of the Special Judge should, apart from any initiative of the accused, be considered by the reviewing judge. There is of course a difference between cls (a) and (b) to this extent that in cases falling under cl.(a) the review follows compulsorily and automatically, whereas in cases falling under cl.(b) there view procedure becomes available only if the Special Judge thinks it necessary to submit the case to the reviewing Judge. But once the case has been so submitted, there is no difference in the legal position between cases falling under cl.(a) and cases falling under cl.(b) of S.8. It may perhaps be putting the position too high to describe the sentence of the Special Judge in these cases as only provisional or tentative; but the scheme of the section undoubtedly is that the proceeding against the accused in such cases is not to be regarded as complete till after the review is over. In this view, we are of the opinion that in all cases falling under S.8 (a) and in all cases where references had been made by the Special Judge under S.8 (b) the accused will have to be tried under S.4 of ordinance 19 of 1943, unless the reviewing Judge, acting under the special Criminal Courts Ordinance, had given his decision before the new Ordinance 19 of 1943 came into operation. The words 'whether or not the proceedings in which the sentence was passed were submitted for review under S.8' in cl.(2) of S.3 must be taken to have been used only to indicate that even the adverse termination of the review proceedings would not exclude the right of appeal and revision given by the clause. The possibility that the High Court as a Court of appeal or acting as a confirming Court under chap. 27, Criminal P.C., may consider or confirm the sentence will not in our opinion suffice to bring this special class of cases under S.3 (1) of the new Ordinance, or take them out of the operation of section 4.

A further contention was advanced with reference to cases in which the accused had been sentenced to death by the special courts. It was argued that as under Ss.31 and 374, Criminal P.C., a sentence of death passed by a Sessions Judge was subject to confirmation by the High Court and as no such confirmation by the High Court as such had been provided for in the Ordinance, one of two consequences must follow: either the unconfirmed sentences must be treated as incapable of execution on the ground that there was no one who could properly refer them for confirmation, or the cases should be treated as pending cases within the meaning of S.4 of the Ordinance. Whilst we agree that such sentences cannot be executed until confirmed by the High Court, we can see nothing to prevent the judicial officer who passed the sentences or the Sessions Judge for the time being referring them for confirmation to the High Court. We are also unable to accede to the contention that such cases can be treated as falling under S.4 even after they had been dealt with by a Review Judge under S.8 of Ordinance 2 of 1942. Section 4 of Ordinance 19 can be invoked only in cases where the trial before the Special Courts had not concluded. The High Court acting as such under the Criminal Procedure code cannot be spoken of as a 'special court' within the meaning of the above provision. We now turn to the individual cases before us.

Cases Nos 39 and 54 – In these two cases the convicted persons have come up in appeal against judgments of the Patna and Allahabad High Courts respectively dismissing their appeals from sentences passed by Special Judges. In both cases the sentences were subject to review under S.8 (a) of Ordinance 2 of 1942. On the date of the commencement of Ordinance 19 of 1943 the review had not been completed. These cases therefore fall within the purview of S.4 of that Ordinance, with the result that the proceedings had in respect of them before the Special Judges must be held to be void and the cases must be deemed to have been transferred to the appropriate court under that section for inquiry and trial in accordance with the provision of the Criminal Procedure Code. The appeals in these two cases are allowed and further proceedings will be taken in accordance with the provisions of S.4 of ordinance 19.

Cases Nos 35, 36, 43, 44, 45, 46 and 49 – Cases Nos 35 and 36 are appeals from orders of the Patna High Court refusing writs of habeas corpus, while case No. 49 is an appeal from an order of the Madras High Court refusing writ of *certiorari*. Cases Nos 43, 44, 45 and 46 are appeals from a preliminary judgment of the High court at Nagpur upholding the validity of S.3 (1) of Ordinance 19 of 1943. The conclusions at which we have arrived concerning the validity and effect of S.3 of the Ordinance must result in the dismissal of all these appeals and we order accordingly.

Cases Nos 40, 41 and 42 – These are appeals from judgments of the Patna High Court dismissing in each case the appeal of the convict from a sentence of death and confirming the sentence passed by a Special Judge for the offence of murder in the first two cases and for the offence of waging war against His Majesty the King in the third case. In these and in other cases where the High Courts had dismissed the appeals of the convicts on the merits, we granted leave on applications made to us for grounds on the merits of the cases to be raised before us. In some of these cases counsel made attempts to persuade us to assess the weight of evidence for ourselves in order to determine whether the conviction was or was not justified in each case on the evidence. This we declined to do as we hold the view that in cases of this description we should ordinarily accept as final the conclusions of fact at which the High Court has arrived unless it can be shown that the High court has either misread any part of the evidence or has overlooked any material portion of it. In these three cases we have not been

shown sufficient grounds for disturbing the conclusions at which the High Court has arrived concerning the guilt of the appellants.

As regards the sentence it was urged that the death sentence imposed in these cases should be reduced to transportation for life on account of the time that has elapsed since the sentences were first pronounced: see 21 I.C. 882 at p. 893. It is true that death sentences were imposed in these cases several months ago, that the appellants have been lying ever since under threat of execution, and that the long delay has been caused very largely by the time taken in proceedings over legal points in respect of the constitution of the courts before which they were tried and of the validity of the sentences themselves. We do not doubt that this Court has power, where there has been inordinate delay in executing death sentences in cases which come before it to allow the appeal in so far as the death sentences is concerned and substitute a sentence of transportation for life on account of the time factor alone, however right the death sentence was at the time when it was originally imposed. But this is a jurisdiction which very closely entrenches on the powers and duties of the executive in regard to sentences imposed by Courts. It is a jurisdiction which any Court should be slow to exercise. We do not propose ourselves to exercise it in these cases. Except in case No. 47 (in which we are commuting the sentence largely for other reasons as hereafter appears), the circumstances of the crimes were such that if the death sentence which was the only sentence that could have been properly imposed originally, is to be commuted, we feel that it is for the executive to do so. We do not doubt that in each case the executive will give the fullest consideration to the period that has elapsed since the original imposition of the sentence and to the consequent mental suffering undergone by the convict. It has been further suggested that in England when cases in which a death sentence has been imposed are allowed to be taken to the House of Lords on account of some important legal point, the consequential delay in finally disposing of the case is treated as a ground for the commutation of the death sentence, and that if such a practice is recognized in cases which go with the Attorney-General's authority to the House of Lords because they 'involve some point of law of exceptional public importance' [Criminal Appeal Act, 1907, S.1 (6)] a similar course might well be taken in this country in these cases in connexion with which 'substantial questions of law as to the interpretation of the Constitution Act' have twice had to be considered by this Court in view of the granting by High Courts of certificates under S.205, Constitution Act. We consider however that these matters are primarily for the consideration of the Executive and do not in the circumstances of these cases justify us in commuting the death sentences by orders of this Court. With these observations we dismiss these appeals.

Case No. 47 — The appellant in this case was convicted by a Special Judge of the offence of murder and was sentenced to death on 30th September 1942. His appeal to the Allahabad High court was dismissed and the sentence of death was confirmed. The appellant is a young man of 25 who has been twice widowed. His victim was his aunt, 30 years of age, whose husband (Kanchan) had about six years previously murdered his own brother, appellant's father. Kanchan was sentenced to death for the murder, but lost his reason while awaiting the execution of the death sentence, and is now detained as a lunatic. The evidence in this case leaves no room for doubt that the appellant was rightly convicted of murder. There is some confusion as to the exact motive for the undoubtedly brutal assault of which the appellant made his aunt the victim. The prosecution alleged that the appellant being a widower was chagrined by the refusal of his aunt to become his mistress. In his statement before the Special Judge he said that another uncle (P.W.7) who according to the appellant was behind the

prosecution was on terms of improper intimacy with the deceased and resented even small acts of kindness on the part of the deceased towards the appellant. In the appeal preferred by him through the jail authorities to the High court, the appellant stated that his aunt was a woman of loose character and was pursuing him with unwelcome attentions. The previous history of this family indicates that the appellant probably suffers from an unbalanced mind. The nature and ferocity of the assault upon his aunt appear to confirm this. In committing the offence the appellant must have been actuated by jealousy or by indignation either of which would tend further to disturb the balance of his mind. He has besides been awaiting the execution of his death sentence for over a year. We think that in this case a sentence of transportation for life would be more appropriate than the sentence of death. We accordingly reduce the sentence of death to one of transportation for life and subject to this modification dismiss the appeal.

Case No. 38 — The appellants in this case, convicted by a Special Judge of the offence of rioting and mischief by fire and were sentenced to three years rigorous imprisonment and a fine of Rs 300, in the case of Jagan Nath, and four years rigorous imprisonment and a fine of Rs 300, in the case of Ramanand. Their appeal was dismissed by the Patna High Court. The appellants are alleged to have been members of an unlawful assembly consisting of about two thousand people who raided a police beat house on 21st August 1942, and destroyed various items of Government property, and also looted a post office and a liquor shop close by. The question on which we feel considerable doubt is whether the complicity of the two appellants before us in these events has been satisfactorily established. On the evening of 21st August an entry (i.x.1) was made in the station diary kept at the beat house, by the Assistant Sub-Inspector in charge of the beat house, recording a brief summary of the incidents that took place in the course of the riot but omitting all mention of the names of any accused persons in connexion therewith. On 26th August, Bansilal Chaudhury (P.W.4), the liquor vendor, and Umapat Lal (P.W.6) the branch postmaster, handed to the police reports in respect of the incidents relating to the liquor shop and the post office respectively. These reports are EX.3 and EX.5. Exhibit 3 contains the names of eleven persons including those of the appellants, while EX.5 refers to a mob consisting of Ramanand Sahu and others. The formal first information report was not drawn up till 3rd September 1942. It contains the names of the appellants and several others. The evidence in the case consists of the testimony of Siva Chandai Tewari (P.W.1), Assistant Sub-Inspector in charge of the beat house; Ramanand Singh (P.W.2), constable, and Abbas Mian (P.W.3), dafadar, both attached to the beat house; Bansilal Chaudhury (P.W.4); Nagina Prasad (P.W.5), Sub-Inspector of Police, who carried out the investigation; and Umapat Lal (P.W.6). These witnesses were examined in Court on 21st and 22nd December.

The investigation had been supervised by Babu Rameshwar Prasad Singh, Divisional Inspector. On the morning of 23rd December a petition was put in on behalf of Ramanand Sahu asking that Babu Rameshwar Prasad Singh should be summoned as a witness, as it was the case of Ramanand Sahu that none of the prosecution witnesses had during the investigation mentioned his name to this officer as an accused person. This application was rejected by the Special Judge on the grounds, first, that the witness had been transferred to a neighbouring district and that undue delay would be occasioned to the trial if he were to be summoned to give evidence, secondly, that the application ought to have been made earlier and that there was no explanation for the delay in making it, and thirdly, that the evidence of the witness was not material. We are unable to appreciate the reasons given by the Special Judge for

declining to summon this witness. In our opinion, he was a material witness and should have been examined as a prosecution witness or at least offered for cross-examination. His transfer to a neighbouring district should have made no difference as it should have been possible for the Crown to procure his attendance with the minimum of delay. The necessity for procuring the attendance of this witness for examination became apparent to the particular accused and his advisers only on 22nd December during the examination of Nagina Prasad (P.W.5). We fail to see how the accused could be charged with undue delay in making the application. On this ground alone we would have been disposed to hold that serious prejudice had been occasioned to Ramanand Sahu, appellant, by the failure of the Judge to direct the attendance of this witness.

There are other unsatisfactory features in the case and, on the evidence, we do not think the conviction in this case can be sustained. To continue with the case of Ramanand Sahu, his name is found in the first information report both in the list of accused persons as well as among the witnesses. He was examined by the police during the course of the investigation as a witness, though the investigating officer made an attempt to explain this away by saying that he was examined as an accused person. As no other accused person was examined during the course of the investigation it is difficult to accept this explanation as correct. Further in the first information report of 3rd September 1942 the Assistant Sub-Inspector states, after describing the incidents, that he asked the accused 'who was present in the mob to see to this occurrence but he replied that he was unable to do anything as the mob was out of control'. This is not easily reconcilable with the view that the accused was himself one of the rioters. The special Judge found that the investigating police were not able to make up their minds for sometime whether Ramanand Sahu was present with the mob as a member of the unlawful assembly or as an innocent spectator. If that was so, it is not possible to maintain his conviction for the reason that the only evidence that can be taken into account against him on behalf of the prosecution is the testimony of P.W.1 (Assistant Sub-Inspector) and P.W.3 (Police dafadar). This testimony was available to the police at the earliest possible moment and if true should have put the matter of the complicity of Ramanand Sahu in the riot beyond doubt. If nevertheless the investigating police could not make up their minds with regard to the complicity of Ramanand Sahu, the only inference to be drawn therefrom is that they were not satisfied with the statements of these two witnesses made in the course of the investigation.

It is true that P.W.2 (Ramanand Singh, constable) also mentioned Ramanand Sahu's name at the trial as one of the rioters, but it has been established that this witness had stated during the investigation that he was being so much mobbed during the riot that he was unable to identify anyone. His subsequent statement in Court against Ramanand Sahu was therefore worthless. Both Ramanand Sahu and Jagannath Sahu were stated by P.W.4 and P.W.6 to have taken part in the riot, but the testimony of these two witnesses was rightly rejected by the High Court on the ground that they did not mention the names of these two accused persons before the Deputy Superintendent of Police during the investigation. The prosecution case is, however, open to challenge on a more serious ground. According to the investigating Sub-Inspector the names of certain rioters, including those of the two appellants, were definitely ascertained immediately after the riot; yet he gave instructions to the Assistant Sub-Inspector not to enter the names of the accused persons in the entry made in the station diary (Ex.1) the same evening as 'a matter of precaution'. The explanation given was that as copies of the entries in the station diary had to be sent to head-quarters and the countryside round about was in a very disturbed state it was feared that a copy of the entry might fall into the hands

of the rioters or their sympathizers and that this might attract reprisals against the police. We do not consider this explanation satisfactory. The apprehension of reprisals, if it was at all justified, would result just as much from the fact of the incident of the riot being entered in the diary as from the mention of the names of accused persons in it. As a matter of fact the diary does mention the name of Ramanand Sahu as a person near whose house the mob was when it was first observed by one of the police witnesses. The direction by the Sub-Inspector deliberately to keep the names of the accused persons out of the diary raises so strong a doubt with regard to the whole of the prosecution case that, taking it with the other features of the case that we have mentioned above, we are forced to the conclusion that it would not be safe to maintain the conviction of either of the appellants. We, therefore, accept their appeal and acquit them. They must be released forthwith and the fines, if recovered, should be refunded.

Case No. 53 – In this case the five appellants were sentenced to rigorous imprisonment for a period of seven years, a fine of Rs 200, and a whipping of ten stripes each of attacking a railway station and damaging the telephone and telegraph apparatus, machinery in a signal box and other Government property, about 1.30 p.m. on 15th August 1942. Their appeal to the Allahabad High Court was dismissed and the sentences were upheld. The Special Judge who tried the case found that the whole of the prosecution evidence was unsatisfactory but nevertheless convicted the appellants and some others who were acquitted by the reviewing Judge. The learned Judge of the High Court who dealt with the case on appeal took on some points a view of the evidence different from that taken by the Special Judge and upheld the conviction and sentences as he found that some of the prosecution evidence was less open to objection than the trial Judge thought was the case. We are unable to agree with this view. The first information report was alleged to have been drawn up at 3 p.m. on 15th August, almost immediately after the occurrence. The Special Judge found that the report was not made at 3 p.m. but after 7 p.m. and that it was deliberately ‘ante-timed’. The learned Judge of the High Court did not reject this finding. This finding alone would be sufficient to cast serious doubt on the prosecution case with regard to the participation of particular individuals in the incidents that occurred at or near the railway station. Again, the prosecution case was that as the mob was damaging the telephone and telegraph apparatus the appellants along with others were arrested at or near the railway premises after a chase and were brought to the railway station where they were identified by the railway staff. This version was flatly contradicted by the railway staff, and the trial Judge found that the prosecution case on this point could not be accepted. With regard to the evidence of the station staff, the only observation made by the learned Judge of the High Court was that the matter was not of any very great importance and that the failure of the station staff to support the prosecution case on this point was immaterial. The learned Judge went on to find that the appellants were arrested in the manner alleged by the prosecution, but this was based more upon the improbability of the defence version on the point rather than upon the reliability of the prosecution evidence. This is unsatisfactory. We think that the finding of the trial Judge that the arrests were not made at or near the railway station was fully justified. We must point out that at the very least these two findings, namely, with regard to the time of the recording of the first information report and the time and place of the arrest, establish the complete unreliability of the police witnesses who were examined in the case.

The rest of the evidence consisted of the testimony of three headmen, three boys of the local vernacular school aged 11, 12 and 13, and two witnesses named Dip Singh and Kanhai. As regards the last named two witnesses, the trial Judge held that it was impossible to place

any reliance upon their statements. The learned Judge of the High Court also ignored their evidence as he found that they had clearly been unwilling to give evidence against any of the accused. With regard to the headmen, the finding of the trial Judge was that the witnesses were not present during the occurrence at all, nor did they take part in the arrests, and he consequently altogether ignored their testimony. The learned Judge of the High Court, on the other hand, held these witnesses to be witnesses of truth. We have gone carefully through the detailed reasons given by the trial Judge for rejecting the testimony of these witnesses and we agree with him that their evidence cannot be accepted as true. The learned Judge of the High Court did not consider all the reasons given by the trial Judge for disbelieving these witnesses. He dealt with only one point in this connexion, namely, whether the witnesses had given good reasons for being present in the town where the riot took place on the day and at the time of the riot. He appeared to think that apart from any reasons given by these witnesses for being present in the town, it was quite natural that they should be in the town especially when there was some excitement going on about that period. He found the stories related by them quite natural and convincing. We regret we are unable to agree. In our opinion, it was the reverse of natural for these headmen who belong to neighbouring villages, to leave their villages where their duties lay, at a time of excitement. The trial Judge having given convincing reasons for rejecting the testimony of these three witnesses, the learned Judge of the High Court was not, in our opinion, justified in overriding the finding of the trial Judge merely because he had himself a feeling that this testimony should have been accepted. He should have tried to meet the detailed reasons given by the trial Judge in support of his finding before overriding it. We are ourselves unable to accept the evidence of these witnesses as true.

This leaves us with the evidence given by the three school boys. The position with regard to this is little better. It appears that these boys were taken into custody on the day of the riot and were only released on certain persons standing surety for them. At the time of giving evidence at the trial, they were living with the sureties and not with their parents. One of them stated that he had been told that he could go home only after giving evidence. They made completely contradictory statements in their examination-in-chief and cross-examination. The trial Judge observed with regard to two of them that they had probably been won over by the defence and with regard to the third that he was making a tutored statement. The learned Judge of the High Court was of the opinion that these boys had been influenced against the prosecution and that they were not willing witnesses. He concluded from this, however, that anything that they had stated against the appellants was worth a good deal more than it would have been if they had been friendly to the prosecution. We do not consider this a correct or fair approach. Once a witness has been found to be wholly unreliable it is unsafe to place any reliance upon any part of his testimony. It should not be open to the prosecution to pick out a bit here and a bit there from the evidence of a witness whom they themselves are not willing to accept as a witness of truth, and to use these salvaged bits, from testimony which is otherwise contaminated, to bolster up their case against particular accused persons.

The gist of the learned High Court Judge's finding on the whole case is contained in the observation that there was really no explanation why anybody should have invented a false case against the appellants. This is not in our opinion a justifiable point of view to adopt in a case like the present where the prosecution evidence was found to be largely false and riddled with defects and contradictions. The prosecution having failed completely to establish the guilt of the appellants by good and reliable evidence, it was not for the appellants to explain why their name had been mentioned by the prosecution witnesses as persons who

had participated in the riot. We have already stated why it is in our opinion unsafe to rely upon the testimony of the police witnesses in this case. As the trial Judge did, however, rely upon the testimony of Chhabnath Singh, constable, and based his finding with regard to the guilt of at least two of the appellants solely upon that evidence, we consider that an observation or two are called for in that connexion. The trial Judge stated that there was no reason to disbelieve this witness though he had undoubtedly made untrue statements on certain points. He then went on to observe that this witness had certainly falsely accused one of the persons whom the trial Judge acquitted on a positive finding that he was not present among the crowd that committed the riot. The trial Judge having found that this witness had told lies with regard to the time at which the first information report was recorded, with regard to the time and place of the arrests and with regard to the participation of Soney Lal accused in the riot, we fail to see how any reliance could be placed upon his testimony with regard to the alleged participation of other accused persons in the riot.

The view that we take of the case is that the trial Judge gave good and convincing reasons for rejecting the testimony of the prosecution witnesses and wrote what in effect amounted to a judgment of acquittal. For some reason, however, he thought it the better part of wisdom to convict some at least of the accused persons who had been put on their trial before him. The learned Judge of the High Court should have treated the judgment as one of acquittal and should have addressed himself to the question whether in case of an appeal by Government he would have been justified in upsetting the judgment if it had been given the form, as it already possessed the substance, of a judgment of acquittal. If the learned Judge of the High Court had approached the question from that point of view, we feel sure, he would have declined to reverse the trial Court's findings with regard to the value to be attached to the prosecution evidence and would have given effect to them by himself passing an order of acquittal. We are clearly of the opinion that on the record as it stands there is nothing to support the appellants conviction, which must be set aside. We therefore accept the appeal, acquit the appellants and direct that they should be released forthwith, and that the fines, if recovered, should be refunded.

Cases Nos 37, 50, 51 and 52 — In these cases the appellants were convicted by Special Judges for serious offences committed during the disturbances of last year and were sentenced to various terms of imprisonment. Their appeals to the Patna High Court were dismissed. Nothing was urged before us which served to raise any doubt in our minds with regard to the propriety of the convictions and sentences. Our attention was however drawn to what we cannot but regard as a very serious irregularity committed by the Special Judge in case No. 37 in recording the evidence of some of the prosecution witnesses, e.g., P.W.S.3, 4, 5 and 7. The memorandum of the substance of the evidence of P.Ws.1 and 2 having been recorded, the Judge contented himself in the case of several other witnesses with summarizing their examination-in-chief relating to the main incidents to which they were deposing by recording merely that they corroborated or supported the statement of P.W.2, or gave the same story as P.W.2. Under the provisions of S.6 of Ordinance 2 of 1942, the Special Judge was not bound to record the evidence of any witness verbatim, but he was bound to record a memorandum of the substance of the evidence of each witness examined. The record of the evidence of P.W.2 no doubt represents the substance of the evidence given by that witness. The statement that other witnesses corroborated or supported the statement of P.W.2 or gave the same story as P.W.2 with respect to certain incidents surely does not constitute a memorandum of the substance of the evidence given by those witnesses. We have no doubt

that the failure on the part of the Judge to comply with the provisions of S.6 of Ordinance 2 of 1942 put the accused at a certain disadvantage and occasioned a certain amount of prejudice to them in the conduct of their defence. We are however satisfied on an examination of the whole record that the irregularity did not in fact occasion a failure of justice. We dismiss these appeals.

R.K. Order accordingly.

1. This quotation is taken exactly as it was printed in the All India Reporter 1944, p 11 - Ed.

132: Draft Proforma informing the grounds of detention to prisoners

File No. 44/57/43 - Home Poll (I)
[NAI]

Suggested Form of Communication to Security Prisoners

1. In pursuance of section 7 of Ordinance No. . . . so as so is informed that the grounds for his detention are . . .

(In the case of a Member of the All India Congress committee).

that he was a party to the passing of the Congress resolution of August 8th, 1942, sanctioning a mass movement which was calculated to impede the successful prosecution of the war.

(For a Member of proscribed Congress Committee)

that he was an office holder and a prominent and active member of the organisation which passed the resolution of August 8th, 1942, etc., etc.

(For an organizer or underground worker)

that he was actively supporting and helping the underground organisation of the mass movement sanctioned by Congress in the resolution of August 8th, 1942, which was calculated to impede the successful prosecution of the war.

(For a participant in the movement against whom there was not sufficient evidence for prosecution)

that he was taking an active part in the mass movement sanctioned by Congress etc., etc.

(For a terrorist)

that he was an active member for an organisation the object of which is to overthrow the Government established by law by a terrorist crime or other violent methods.

2. So and so is informed that he has a right to make a representation in writing against the order under which he is detained. If he wishes to make such a representation, he should address it to the undersigned and forward it through the Superintendent of the jail as soon as possible.

133: Government of India to all Provincial Governments

File No. 44/37/43 - Home Poll (I)

Secret

Government of India,
Home Department.

Express Letter

From
Home, New Delhi.

To
All Provincial Governments.

No. 44/37/43 - Poll (I)

New Delhi, the 4th December 1943.

Subject: Publication of Provincial Security Prisoners Orders/Rules.

We are not clear as to the practice in all provinces regarding the giving of publicity to the various rules and orders made by them to govern the conditions of detention of their security prisoners. In some provinces these rules are treated as secret or confidential, while in other they appear to have been published, either in the Provincial gazette or as official publications. We have in the last two sessions of the Legislature been pressed to place copies of provincial Governments' security prisoners rules in the Library of the House. We have hitherto resisted this pressure on the ground that it is inappropriate for details of Provincial Governments' rules to be communicated to the Central Legislature. The weakness of this position is, however, manifest. In particular, it can well be argued that since Central Government prisoners detained in Provinces are subject to the rules obtaining in that Province, the latter rules are the legitimate concern of Members of the Central legislature, and since we are responsible for the general principles governing the treatment of persons detained without trial, we have in fact given a considerable amount of information about provincial practice in reply to questions on this subject. A further point is that refusal to disclose these rules must give rise to a suspicion, which might well be avoided, that there is something to conceal and that the rules contain harsh provisions which Government dare not make public. As against this, it could be argued that to make available for Members of the Central Legislature copies of all Provincial rules would merely be furnishing them with further ammunition for detailed questions on the practice in an individual Province and on divergence of treatment as between one Province and another. Provided however, as we believe to be the case, that provincial practice in the various matters of principle laid down by us is now substantially uniform, we do not anticipate any difficulty in refusing to investigate matters of detail.

2. We do not suggest that any Province should give wide publicity to its rules, e.g. by

giving them to the Press. But we do consider that there would be advantage in placing in the Library of the Central Legislature copies of provincial security prisoners orders/rules, as we have already done in the case of Central orders. To supply copies in the case of some Provinces and to withhold them in the case of other would be less desirable. Will you please let us know whether you agree to our placing a copy of your Security Prisoners orders/rules in the Library of the Central Legislature?

- (a) if all other Provincial Governments agree, or
- (b) whether or not all other Provincial Governments agree.

R. Tottenham
Addl. Secy. to the Government of India.

134: Government of Madras to the Government of India (regarding new ordinance) – (dated 11th December 1943)

File No. 44/57/43 – Home Poll (I)
[NAI]

From
G.W. Priestly, Esq., C.I.E., I.C.S.
Chief Secretary to the Government of Madras
Fort St George, Madras

To
The Additional Secretary to the Government of India
Home Department, New Delhi

Ordinance to replace Defence of India Rules 26 – Your letter No. 44/57/43 – Poll (I) dt 3.12.43.

The Government of Madras observe from paragraph 8 of your letter¹ that they are not consulted as to the principles underlying the draft of the Restriction and Detention Ordinance, 1943, but are only given an opportunity of bringing to notice any points of doubt about the drafting of the ordinance or any substantial difficulties of an administrative character that may be anticipated in giving effect to the ordinance.

2. I am directed to say that this Government have carefully and critically examined the provisions of the draft ordinance² and they agree with the Government of India that an ordinance on the proposed lines is really desirable and necessary. In the urgency of the case and in the circumstances explained in the concluding paragraph of the above letter, this Government do not propose in this letter to indulge in an elaborate and detailed criticism of the several provisions of the ordinance, but wish to confine their observations to a few points of interest which are deemed worthy of notice.

3. (a) Sections 1–5, 8, 12 and 13 of the ordinance require no comments. It is observed that

section 6 which is designed to validate all orders passed under Defence of India Rule 26 will have the desired effect of completely setting at rest all doubts and disputes raised regarding the validity of ordinance No. XIV of 1943 which amended section 2 of the Defence of India Act, by extending the rule making powers so as to cover a rule like Defence of India rule 26.

- (b) Section 7 requiring the authority concerned to communicate the grounds of detention to the person affected and inform him that he is at liberty to make any representation in writing against the order of detention is recognised as a very desirable provision which, if enacted should obviate much of the criticism now levelled against orders made under Defence of India Rule 26. I am at the same time to sound a note of warning that the Government of Madras foresee the possibility of trouble in complying with the requirements of this section. Experience shows that many of the detenus being lawyers will be apt to make capital of this section and start complaints that representations cannot be made properly, unless access is allowed to particular documents and officers and persons and unless they are allowed to cross-examine the witnesses and officers who made reports against them. Possibly the case may even arise where a detenu may refuse to avail himself of the opportunity accorded to him of making his representation, on the ground that a particular facility desired and considered necessary by him has been denied to him. In the circumstances, I am directed to suggest for the consideration of the Government of India whether section 7 should not be tightened up so as to guard against extravagant claims for facilities in making representations.

In this connection I am to point out that the word 'practical' in the last line of section 7 is apparently a mistake for 'practicable'.

- (c) Section 9 specifically restricting the period of detention to 6 months in the first instance and providing for extension by the Government themselves after considering the necessity for such extension in each case as contemplated in paragraph 4 of the Home Department letter is, a satisfactory substitute for Advisory Committees, as it ensures a periodical review of all cases of detention.
- (d) Section 10 excluding as it does the jurisdiction of courts to issue orders in the nature of 'habeas corpus' under section 491 of the code of criminal Procedure, is considered an important provision. I am to invite attention to the fact that the rule of presumption laid down in clause (3) of this section will only apply when an order passed under the ordinance purports to be signed by the authority making it. An order of Government is not signed by the Government as such but is only authenticated by a Secretary to Government or other officer empowered to sign Government orders by the rules framed for the transaction of the business of the Government. I am accordingly directed to submit for the consideration of the Government of India whether the scope of clause (3) does not require to be extended so as to cover orders of Government signed by a Secretary to Government or other officer empowered in this behalf.
- (e) A provision on the lines of section 11 which precludes the court from allowing statements to be made or evidence to be given as to the contents of any communication made under section 7 in regard to the grounds of detention or any representation made under that section appears very desirable and follows as a consequence of section 7.

4. In conclusion, I am directed to say that the Government of Madras have noted that

the Government of India have under separate consideration the promulgation of an ordinance in respect of the class of persons entering India from Burma, etc. In the opinion of this Government such an ordinance is necessary especially in view of the fact that there are in this province a number of such persons including the 14 accused acquitted in the recently concluded Enemy Agents Case.

Your obedient servant,

Chief Secretary

1. Not printed – Refers to letter dated 3.12.43 wherein it says 'Since the Government of India are primarily responsible for war legislature and its operation by the Provinces, they do not consider it necessary to consult Provincial Governments on the Principles of these proposals'.
2. Draft ordinance not printed – See Doc. 145 for the final version of the ordinance.

135: Government of Bengal to the Government of India regarding new ordinance

File No. 44/57/43 – Home Poll (I)

[NAI]

Dated 11th December 1943

'The Government of Bengal do not wish to record any objection to the principles newly embodied in the draft Ordinance¹ which in fact, they endorse.

2. There will, however, be very considerable administrative difficulties in furnishing to security prisoners in Bengal a statement, under clause 7 of the draft, of the grounds on which they have been detained. In perhaps a far larger proportion of cases in Bengal than elsewhere it will be impossible in the public interest to furnish grounds, to which in effect the prisoner will be able to submit any reply, and it will be necessary to confine the grounds furnished to a purely conventional, general and uninformative statement, such as that suggested for terrorists in paragraph 5 of the Government of India's letter. The Government of Bengal apprehend that this will arouse both public dissatisfaction and persistent criticism within and outside the Legislature, which may, and in all probability will, create acute embarrassment for any Ministry for the time being in power.

3. (i) The provincial Government understand that an amendment to the draft is under consideration with the intention of removing the lacuna at present existing in clauses 4 and 5 of the draft, which do not make it possible for Government to pass an order under clause 4 in respect of persons detained by authorities exercising delegated powers.
- (ii) They also press for the amendment of clause 3(4), to which they understand that the Government of India contemplate giving effect, and which will authorize Government by order to prescribe conditions of detention generally, including specifically conditions as to maintenance, discipline etc.
4. Very grave administrative inconveniences are expected to follow from the prescription

of so short a time as six months as the maximum period for which an order of detention may be passed and the consequent requirement to review 'all the circumstances of the case', with the object of issuing a continuing order under clause 9, within the period of six months prescribed. The preparation of even such grounds, as it may be possible, in the public interest, to furnish under clause 7 of the draft, the receipt and due consideration of representations, made by prisoners against the order upon receipt of these grounds, and the issue of orders thereafter, in the very large number of cases in Bengal (which in virtue of clause 6(2) will all be deemed to have been made on a single date, and therefore, to be valid only until the same date, in each case, six months ahead) involve labour which the Provincial Government gravely doubt whether it would be possible conscientiously to complete within the period fixed. They, therefore, desire to press that the initial period of detention under clause 3 and the periods by which detention may be continued in force under clause 9 of the draft should be extended to twelve months.

5. The attention of the Government of India has been drawn in previous correspondence to the necessity of effectively providing against improper inquisition by the courts into the validity of orders passed under Defence Rule 26. The same necessity will continue under the Ordinance as now drafted, and the Government of Bengal very strongly urge that provision should be made to exclude rigorously, and without the possibility of legal quibble, any such transgression of their jurisdiction by the courts. What the Government of Bengal feel must be protected against such inquisition is not only orders 'in good faith made' but also orders 'purporting to be made' under the Ordinance. They gather that it is in the contemplation of the Government of India to issue a further communication on this subject to all provincial Governments and they trust that this point will be reconsidered by the Central Government.

6. Finally, with what the Government of India refer to as the 'contempt case' in mind,¹ the Provincial Government desire to press once more the necessity of completely protecting officers acting or purporting to act in accordance with the Ordinance from all suits, prosecutions on other legal proceedings whatsoever without previous sanction of Government.

1. Draft ordinance Not Printed – for final version see Doc. 145

2. This refers to Doc. 47

136: Judgement in the case of Ratnamamba¹ – (dt 11.12.1943)

Govt. of Madras, U.S. Files, File No. 2/1944

[I.N.A.]

In the Court of the Joint Magistrate, Bezwada Judgement in Caiender case No. 143/43 Joint Magistrate of Bezwada.

Complainant Rex. Station House Officer Kankipadu, Cr. No. 114/43

Accused Edupuganti Ratnamaba of Penama

In the Court of the Joint Magistrate, Bezwada. Present – A.G. Barson, Esq., I.C.S.,

C.C. 143/43.

This case coming on for hearing on 20.9.43, 23.10.43, 16.11.43, 29.11.43, 6.12.43 and having stood over for consideration the court delivered the following:

Order

The Station House Officer, Kankipadu has charged the accused under 39(6) read with 34 of the D.O.I. with possessing prejudicial literature.

5 P.W.s were examined. P.W.1. is the Inspector of the Special Branch Police. He states that on 24.7.43 he received information that one S. Ramasesha Rao of Gudivada, who had gone out of view, and one M. Satyanarayana who was an absconding accused in the Ongole Bomb case, were being harboured by the accused at Panamakur. He says that he also received information that some prejudicial reports had been received from Bombay for translation and distribution among members of the National Youth League, which is said to be implementing the Congress Rebellion Programme. He says that he learned that a meeting had been arranged some 2 miles from Panamakur for the night of 25.7.43 to decide upon a plan of sabotage on August 9th 1943. He learned also that these persons would meet in the accused house on 24.7.43. He took the Circle Inspector of Police, Bezwada and the S.B. Sub-Inspector Bezwada and some constables and reached Panamakur at 4.O.M. (25.7.43). One of the constables jumped over the compound wall and unbolted the door. The party entered the verandah, on which S. Ramaseshagiri Rao and some others were sleeping. Ramaseshagiri Rao was arrested. Then they woke up the accused who was sleeping inside the house with her mother, and entered the house, which is electrified. The Sub-Inspector, Kankipad then sent for 2 mediators, and in their presence the house was searched for prejudicial literature. A wooden almyrah was searched, and also a suit case (M.O.1) which was under the cot on which the accused was sleeping. The articles found are detailed in Ex. A.² There are some 40 publications, the majority of which contains what is undoubtedly prejudiced matter. The witness states that both the almyrah and the suit case were locked, and were opened with keys which the accused produced. P.W. 2 is the Circle Inspector of Police, Bezwada who accompanied P.W.1. He says that one of the constables jumped over the wall and opened the gate. Then the accused, who was sleeping inside the house with her mother, opened the house door. He then sent for the mediators and searched the house. In M.O.1 and a Wooden almyrah were found the papers detailed in Ex.A. He says that the accused unlocked M.O.1 and the almyrah. He then arrested the accused and brought her to Bezwada.

P.Ws. 3 and 4 are the mediators. P.W.3 now works, in the Electrical Department, Bezwada but in July 1943 he was Assistant fireman in Panamakur. He says that a constable came and called him at about 4.30 a.m. and took him to the house of the accused. He was called inside. He saw some papers taken from a suit case, but he cannot say where the suit case was, nor whether it was locked. He says there was a crowd there, which made observation difficult. He wrote Ex. A. (mediators report). He says that he did not see the accused give the key for opening M.O.1. This witness was treated as hostile and cross examined by the prosecution. He admitted writing in Ex.A. that accused gave the Keys to open M.O.1. Upon cross examination by the defence, this witness states, that some 25-30 people were in the house when he went there, some on the verandah, and some inside. He says that the papers were all collected and placed on the table, and some one gave out the names. He says that he cannot say whether the papers detailed in Ex. A. were those found in the house.

P.W.4 is the Branch Postmaster at Penamakur. He says that he was called to accused house at 4.O.A.M. There were several persons there. After the lights had been lit, he went inside. Accused was inside and she was asked to open an almyrah. She did so, but he did not see what she opened it with; nor did he notice the papers being removed from the suit case. He says the mediators report was written at the dictation of P.W.1 and he signed it without seeing what was written therein. This witness also was treated as hostile and cross examined by the before signed, and that he did not object to anything that was written therein. Upon cross examination by the defence, this witness states that accused lives either with her mother or in her paternal uncle's house, when she stays in the village. He states that P.W.2 was lying outside on a cot during the search. P.W.5 is the Village Munsiff Penamakur. He states that accused owns a house in the village and pays the Government Kist. She was President of the Panchayat Board some 4 years, ago, and was a Congress member of the District Board. She goes out of the village now and then. In cross examination this witness admits that the accused has no property of her own in the village, and that the house belongs to her mother.

The accused when examined, did not make any oral statement, but filed a fairly long written statement. In this she says that she has no house at Penamakur, but stays with her mother or her paternal uncle, or also in the Panchayat Office, when she comes to the Village. She says that she arrived there from Bezwada on 24.7.43. At 3 a.m. the next morning, the police knocked at the door. When she opened it, some 15 persons entered and began searching. There was no light, as the bulb had fused, and there was considerable confusion. Then the police sent for the Village officers, and then for P.Ws. 3 and 4. She denies giving any keys for opening the Almyrah, and says she has no knowledge of the prejudicial literature, or how it came there.

It is clear from the evidence of the Village munsiff and of P.Ws. 3 and 4 that the house in question does not belong to the accused, and that in fact she stays there only occasionally. Therefore the mere finding of prejudicial literature in that particular house would not be sufficient to commit the accused under 39 of the D.O.I. rules. P.Ws. 1 and 2 state that the accused had the keys which opened the almyrah and M.O.I. P.Ws.3 and 4 cannot speak definitely to this in court; both these witnesses also agree that P.W.2 was outside on the verandah on a cot while the search was going on. They both say also that people were coming and going, and their evidence suggest that there was considerable activity inside and confusion. P.W.3 in fact says there was a crowd.

It seems certain that the Police entered the house before the mediators came. P.W.2 says he sent for the Village officers but they were not available, so he called 2 other persons. Both these persons say that a large number of people were inside the house when they came; and P.W.4 says that he went in after the lights had been lit. This last remark agrees with the statement of the accused that the bulb had fused, and contradicts the evidence of P.W.1, which definitely suggests that the light was switched on before the police entered.

3. Points are noticed in the searching of this house. Firstly, no search warrant was taken. It may be of course, that there was no time there is no evidence on this point; secondly, the police were in the house before the mediators came, and if what P.W.4 says is true, without any lights. This of course makes the preparation and attestation of a search list, by mediators, as mere mockery. Thirdly, the Police say that the accused gave them the keys to open the suit case and almyrah they have not been produced.

In these circumstances, I do not feel certain that the accused is the possessor of the prejudicial

literature; or that it was under her control within the meaning of 39(2) of the D.O.1. Rules. I therefore discharge her.

Pronounced in open court.

A G. Barson,
11.12.43
Joint Magistrate.

List of witnesses examined

Prosecution.

1. D. Venkateswara Rao.
2. A. Veerabhadrarao.
3. N. Masthan
4. G. Pitchayya.
5. K. Anjappa.

1. See Docs 56, 60.

2. (Exhibit A) Not printed (exhibit of articles not printed).

137: Government of India to the Government of Orissa (interrogation methods)

File No. 44/2/43 – Home Poll (I)

[NAI]

Secret.

D.O. No. 44/2/43 – Poll (I)

Government of India,
Home Department.

New Delhi, the 31st December 1943.

My dear Dalziel,

Will you please refer to your D.O. No. 3485C dated October 30th, 1943,¹ regarding the treatment of prisoners detained under Defence Rule 129.

2. While we are in general agreement with your views, we do not think that interrogation of the type referred in our letters No. 44/2/43 – Poll (I) dated 25th May² and 30th August,³ 1943, could ever be successfully undertaken in ordinary jails. It is a process that requires great patience and often a considerable period of time, during which the subject must be deprived of other contacts. Even a temporary remand to police custody – if the word ‘temporary’ means for a brief period’ – would very often fail to meet the case. Where expert interrogation is

called for, we remain of the opinion that nothing short of the Special arrangements indicated in our letters still really prove satisfactory.

Yours sincerely,

R. Tottenham.

W.W. Dalziel, Esq., Bar-at-Law, I.C.S.,

Chief Secretary to the Government of Orissa, Cuttack.

1. Doc 116
2. Doc 54 in chapter I – Sect B
3. Doc 78 in chapter I – Sect B.

138: Official Notings regarding new ordinance (dt 1.1.1944) (extracts)

File No. 44/57/43 – Home Poll (I)

[NAI]

Replies to our letter of 3.12.43¹ have been received from all Provinces except N.W.F.P., Assam and Sind. In the case of the first-mentioned, we have a reply from the Governor's Secretary and shall very likely not receive an official reply. A summary has been prepared of the various points raised. These fall into two main categories, drafting points which have been referred individually to Leg. Dept. as they were received, and points of policy which have been retained for discussion at this stage.

2 The following are the drafting points raised:

(a) Clause 3 (1)

Suggestion that the second proviso should be omitted. We may agree with Leg. Dept. that no action is needed.²

(b) Clause 3 (2)

Suggestion that the wording is unintelligible and that the type of bond should be defined. Three proposals are made:

- (i) That the provision for bonds should be omitted entirely (Sir G. Spence)
- (ii) That the provision should instead be made for suspending detention on giving of bond (Mr Sundaram)
- (iii) That provision should be made for taking sureties for restrictions (Mr Wakely)

I would rule out No. (ii); such a provision would I think suffer from most of the defects which we have pointed out in the practice of taking voluntary undertaking before release.

Mr Wakely himself does not favour No. (iii) and I would agree with him.

There remains No. (i). Sir G. Spence's argument is based on the assumption that such a provision cannot be enforced and, granted this assumption, is irrefutable. That the assumption

is true of sureties is certainly obvious; but I am not so sure in the case of bonds entered into by the prisoner himself. It seems to me arguable that, as this sub-clause stands at present, Government could order a prisoner to enter into a bond and that if the prisoner failed or refused to do so, he would be contravening an order made under the rule and thus liable to prosecution. On the practical aspect, however, I would agree with Sir G. Spence. I think that both types of bond are useless (even though we have recommended their use in certain cases of 'greys') and that this sub-clause should be removed.

(c) Clause 3 (4)

Suggestion that 'interviews and correspondence' should be added after word 'maintenance'. We may agree with Leg. Dept. that no action is needed.

(d) Clause 6 (2)

Suggestion that as drafted this sub-clause would cause hardship to a prisoner whose case was on the point of being reviewed at the time the Ordinance was promulgated. This point was previously I am afraid overlooked and has not been referred to Leg. Dept. I can see no ground for N.W.F.P's apprehension. There is apart from anything else nothing that I can see in the Ordinance laying down that an order shall *not* be reviewed within *less* than six months.[A] Leg. Dept.'s views should perhaps be obtained however.[B]

[Marginal Note: [B] *Not necessary, I think [A] is clearly the answer – R.T.*]

(e) Clause 7

Suggestion that as at present drafted the clause implies an obligation to indicate other particulars beyond the grounds of the order. Please see summary No. 4 (Orissa)⁴ and notes at pages 133-4 ante. We may agree with Leg. Dept. that no action is needed.

(f) Clause 8

Suggestion that after the word 'confirming' the words 'or modifying' should be added. Please see summary No. 5 and notes at pages 118-9 ante. We may agree with Leg. Dept. that no action is needed.

(g) Clause 9

Suggestion that intention to permit of more than two extensions of original order should be clarified. Please see summary No. 5A and notes at page 131 ante.⁴ Leg. Dept.'s comments are awaited.

(h) Clause 9

Suggestion that the phrase 'all the circumstances of the case' may be too wide. Please see summary No. 5A and notes at pages 120-1 ante. We may agree with Leg. Dept. that no action is needed.

[Marginal Note: *I will not object to the omission of the word 'all' in this clause and clause 8 – R.T.*]

(i) Clause 10 (3)

Suggestion that the sub-clause should be amplified to cover authentication by a Secretary to

Govt. Please see summary No. 7 and notes at pages 122-5 ante. We may accept the omission proposed by Leg. Dept.

3. The following questions of policy have been raised:

(a) Clause 4 (2)

Suggestion that the punishment for contravention of an order under this clause should be raised to 1 year. The point is for orders. I should have thought six months should suffice (see summary No. 3A).

[Marginal Note: No change - R.T.]

(b) Clause 7

This clause has been the principal target of criticism and summary No. 4⁵ may be seen. The general line taken is that it will be impossible to communicate any but the most general grounds, and that this will not only give rise to great public dissatisfaction, but also to challenges in court on the basis that the authority has in fact failed to communicate the 'grounds of detention.' The amendment proposed by the C.P.⁶ may help to meet this latter point and should be referred to Leg. Dept. The general question is however one of policy. It seems clear that this clause could not be substantially modified without removing one of the main purposes of the Ordinance. It might also be as well to ask Leg.Dept. to confirm that grounds as conveyed in the enclosure to our letter would not be open to challenge.

(c) Clause 8

The U.P. object to the suggestion that the Governor will have to see all delegated orders at the time they are confirmed, which they presume cannot have been our intention. It was, on the contrary, precisely our intention. The point has I think been made clear in the letter which has doubtless issued by now from Def. Dept. about the procedure for issuing orders u/r 26. It should perhaps be made completely clear in any letter of ours which issues on the promulgation of this Ordinance (see summary No. 5).

(d) Clause 9

Both Bengal and U.P. dislike the six-monthly review and would like to see the period both of initial detention and of subsequent extension increased to 1 year (see summary No. 5A).

(e) Clause 10 (1)

Bengal wish orders purporting to be made under the ordinance also to be saved. This has already been discussed threadbare and is impossible.⁷ Their point might I think be to some extent met by the proposal for a moratorium, during which all orders should be remade and during which all existing orders, made or purporting to be made under D.R.26 should be saved. This proposal has admittedly already appeared on this file and been rejected. The Def. Dept. file referred to in (c) above has however shown that all Provincial Govt. orders not seen personally by the Governor — and these may be presumed to be the great majority — will have in any case to be remade; this appears to remove the principal argument against this course, the extra work involved; and this question seems to merit further consideration (see summary No. 7).⁸

(f) Clause 12

Bengal wish protection to be extended to officers purporting to act under the Ordinance. The same considerations apply as in (e) above.

(S.J.L. Olver)
Under Secretary.
1.1.44.

As to the drafting points I have noted my opinion on the margin of U.S.'s note except as regards (b) and (g) As regards (b) I agree that clause 3 (2) might be omitted — since I understand that it shall be open to take bonds with sureties in suitable cases under clause 3(1) (b).

R. Tottenham

- | | |
|----------------|--|
| 1 | Not printed. |
| 2 | See Doc. 145 — the final version of the document. |
| 3, 4, 5 and 8. | Not printed (summary). |
| 6 | Not printed. The C.P. Government in their letter dt 14-12-43 suggested a change in the phraseology in the letter to security prisoners communicating the grounds of detention. |
| 7 | Doc. 128. |

139 Official Noting regarding new ordinance (dt 4.1.1944) (extracts)

File No. 44/57/43 — Home Poll (I)
[NAI]

I agree generally with Additional Secy.'s views but I do not think it necessary to reopen the point referred to in his penultimate paragraph.¹

As regards the renewal of orders under Clause 9, it was certainly not our intention that an entirely fresh order should be made in every such case. What we contemplated was that a simple order should be passed declaring that the original order would remain in force. The drafting should, if necessary, be modified to make this point clear.

It was always anticipated that Clause 7 which requires the grounds of detention to be communicated to the person affected would give most difficulty, but we cannot accept the objections to this Clause. It is a matter of elementary justice that a Government ordering the detention of any person should be able to state in some intelligible way the grounds for their action and that the person affected should know those grounds. I doubt whether any better word than 'grounds' can be found, nor has this word apparently given any difficulty in England. We may, however, be able to give some further guidance as regards the nature of the grounds to be stated after the proposed consultation with Legislative Department.

We cannot, again, accept the view that orders should run for twelve months without renewal. In past Emergency powers ordinances the maximum period of detention without trial has

been much less than this and it is not too much to require a Government to give specific consideration to their cases at half yearly intervals.

(R.M. Maxwell)

4.1.44

Additional Secretary.

1. Not printed.

140: Official Notings regarding interrogation of prisoners (dt 7.1.1944-12.1.1944) (extracts)

File No. 44/2/43 - Home Poll (I)

[NAI]

I assume that the period of two months mentioned by Additional Secretary¹ refers to detention under the R.& D. Ordinance, after two months detention under Defence Rules 129 has already been completed; that is to say, that the total permissible period of detention in police custody for persons undergoing interrogation is four months.

2. Central Government prisoners are only interrogated at our request or at D.I.B.'s request. All that seems to be necessary, therefore, is that D.I.B. should see and be asked to note the procedure proposed in Additional Secretary's note, and to inform us on every occasion when a Central Government prisoner or person who is to be interrogated at our request is detained. We can then keep a record and ensure that his detention in police custody does not exceed the prescribed period.

7.1.44.

(S.J.L. Olver)

Under Secretary

D.S.(I).

I have spoken to Additional Secretary.

The intention is that police custody which may be necessary for the purpose of interrogation, should not exceed two months in all without the express orders of Government.

In most cases, the detention for two months permissible under Rule 129 covers the two month limit proposed. If further police custody for the purpose of interrogation is desired, the Prov. Govt. concerned when passing an order under the new ordinance should expressly decide whether such custody will be allowed: If it is one of our prisoners (our detention orders have a provision for the determination of the conditions of detention by the Prov. Government in whose jurisdiction the prisoner is intended to be kept), we should be informed so that we may be able to keep watch on the period of such custody.

The main object is to enable us and the Prov. Government to keep a watch on such cases so that prolonged periods of police custody may be avoided, as far as possible.

I think all that need be done is to write to Prov. Governments & Chief 'Comms' when

the new Ordinance is out explaining that they should expressly decide in the case of their detainees whether police custody for the purpose of interrogation should exceed two months in all including the period of such custody under Rule 129 and that, the case of our detainees, we should be informed if the period is to exceed two months in all, our general view being that police interrogations ought to be finished ordinarily in two months.

V. Sahay.
10-1-44

Draft for approval.²

12.1.44.
(S.J.L. Olver)
Under Secretary.

1. Doc 130.

2. Not printed

141: Government of India to all Provincial Governments (reg. new ordinance)

File No. 44/57/43 – Home Poll (1)

[NAI]

Letter No. 2 – DC(10)/43

Government of India, Defence Department

8th January, 1944.

Secret

To

All Provincial governments and Chief Commissioners,
copy forwarded to Home Department

Please refer to this Departments' secret express letter No. 2 DC (6) 43 dated the 5th September, 1943¹ about the making of orders under rule 26 of the Defence of India Rules.

2. The practical effect of the majority decision of the Federal Court² must be taken to be that whether or not the individual judgement of the Governor is attracted, his antecedent personal satisfaction is a necessary requisite to the validity of an order made under clause (b) of sub rule (1) of rule 26, otherwise than in pursuance of a delegation under sub-section (5) of section 2 of the Defence of India Act, that a recital of the Governor's satisfaction in an order signed by a Secretary to Government is not conclusive and that the courts will set aside such order if it is shown that the Governor was not personally satisfied. The majority decision must also be taken to leave open a possibility that in certain circumstances the courts might place on the Crown the burden of proving affirmatively that the Governor was personally satisfied.

3. It follows of necessity that all orders hitherto made in the name of the Governor but

without personal consideration by him before the order was made, must be replaced by new orders made either (1) by a Secretariat officer in pursuance of a delegation under sub-section (5) of section 2, or (2) in the name of the Governor after personal consideration by him, and that all future orders must be made in one or other of these makes.

4. In principle, the Government of India have never favoured the first of these alternatives, which they commended in paragraph 2 of their telegram to the Government of Bengal No. 4864 dated the 3rd September 1943³ on the purely practical footing that the majority judgment indicated it as an expedient, calculated to satisfy the courts. In view of the provision made in clauses 8 and 9 of the draft Ordinance forwarded with the Home Department letter No. 44/57/43 - Poll (I) dated the 3rd December 1943,⁴ this consideration will lose much of its force as soon as that Ordinance is promulgated and the Government of India have now no hesitation in preferring the second of the two alternatives set out in paragraph 3 of this letter and I am to express the hope that the same will be adopted in all Provinces.

5. In times of exceptional stress, resort to delegation to Secretariat officers may be necessary. In that event, however, the Government of India are of the opinion that the order made in the exercise of delegated powers should be reviewed by the Governor as soon as the circumstances allow and cancelled or replaced by orders made according to the second alternative.

6. It may be assumed that if orders, whether made in replacement of existing orders or otherwise, were signed by the Governor himself a recital therein of his satisfaction would be accepted by the courts as conclusive. If the Governor signs the order, the must necessarily be expressed in the first person (whereas I, A.B., Governor of . . . am satisfied. . . . Now therefore I, the said A.B., . . .) and the Government of India feel that the drawing of orders in this mode would be highly inappropriate, particularly in Ministerial Provinces. They conclude therefore that orders made in the name of the Governor should continue to be drawn in the third person and signed by the appropriate Secretary to the Provincial Government.

7. The Government of India observe that in some Provinces it has been the practice to combine in one order an order of detention under sub-rule (1) of rule 26, a direction under sub-rule (5) and further orders under rule 27. Since in their opinion only the order under sub-rule (1) need be approved by the Governor, and the others need not, they suggest that the order of detention under sub-rule (1) (b) should be a separate order.

8. The Government of India have noticed the form of orders made under rule 26 varies in different Provinces, and is in some cases open to objection. For example, orders continue to be made which recite indiscriminately all the purposes specified in rule 26 (1) with a view to which an order can be made which, having done so, incorporate the 'or' to which exception has often been taken in the Courts. Nor have order-making authorities always observed the principle that when the authority in whose name the order is made signs the order, the order should be expressed in the first person. The Government of India think that it is desirable to secure as great a degree of uniformity of use as possible, and I am therefore to enclose for the guidance of Provincial Government draft skeleton orders [see below] which the Government of India hope will be found suitable for general adoption:

- (1) An order to be made under rule 26 (1) (b) or under section 3 (1) (b) of the proposed Ordinance in pursuance of a delegation of powers:
- (2) Orders to be made under the same clauses in the name of the Governor;
- (3) Orders to be made under section 8 of the proposed Ordinance in the name of the Governor

If in the case of an order in category (2) or (3) the Crown is required to satisfy a court that the Governor was personally satisfied, or, as the case may be, that he personally considered all the circumstances of the case an affidavit should be filed by an officer in a position to certify from personal knowledge that the Governor was personally satisfied or had personally considered all the circumstances of the case.

9. The Government of India recognise that the doctrine of the majority judgment should logically be applied to orders made under any clause of sub-rule (1) of rule 26 or the corresponding sub-section of the proposed Ordinance and not merely to orders under clause (b) thereof and that a question might well arise as to the application of the doctrine to directions under sub-section (5) of section 2 of the Defence of India Act or the corresponding sub-section of the proposed Ordinance and to a large number of provisions contained in the general code of law in force in British India. They have however, reached the conclusion that unless and until Provincial Governments are confronted with a concrete judicial application of the doctrine outside the field of clause (b) of sub-rule (1) 26 or the corresponding sub-section of the proposed Ordinance, all cases outside that field should continue to be dealt with in accordance with the procedure established under the Rules of Business.

L.G.D. Wakely.
Deputy Secretary to the
Government of India
8-1-44

1. Not printed.
2. Doc. 34.
3. Doc. 90.
4. Not printed but see final version as Doc. 145.

142: Kamla Kant Azad v. Emperor (Varma and Shearer J.J.) (10 Jan. 1944)

AIR, Vol. 31, 1944, Patna pp. 354-68

Criminal Misc. Cases Nos 57, 58, 59, 61, 62, 103, 122, 150, 151, 165, 186, 187, 188, 195, 241, 294, 295, 300, 302, 374 and 392 of 1943, Decided on 10th January 1944.

Shearer J. — These applications are made under S.401, Criminal P.C., by or on behalf of twenty-three persons, who are detained in jails in this province under orders made by the Governor of Bihar under R.26 (1) (b), Defence of India Rules. In response to the rules which were issued, the learned Advocate-General has appeared and has produced copies of the orders, under which the petitioners are detained. Except in one case, the original order, made by the Governor of Bihar, was not produced. None of the petitioners put in a copy of the order, under which he was detained, and, in most of the affidavits it was specifically stated that no copy of the order had been made over to the detenue and that he had merely been given to understand by the jailor of the prison, in which he was confined that an order had been made against him under R.26 (1) (b). It is, I think, essential that, when a person is ordered to be detained under this rule, a copy of the order made against him should be

supplied to him immediately. Clearly, if this is not done, and if an application is made on his behalf to this Court under S.491, Criminal P.C., this Court will have no option but to issue a rule forthwith. Further, it is, I think, incumbent on the Crown, whenever a rule is issued, to exhibit on this Court the original order. Counsel for the petitioners did not, however, ask us to insist on the production of the original orders, and accepted the copies, which were produced as true copies, although, in many cases, they were not certified to be true copies by any responsible officer.

It is now well settled that Rule 26 (1) (b), Defence of India Rules is ultra vires, and also that it is not open to a Court of law, on an application made by a person detained under that rule for a writ of Habeas Corpus, or in a suit, to recover damages for false imprisonment, to enquire into and pronounce on the validity of the reasons, which led to the making of the order. The country is at war, and, for the purpose of safeguarding it against internal as well as external dangers the Legislature has delegated to his executive functionaries the power to order, on one or more of various grounds, the detention of individual persons for an indefinite period. In exercising that very grave responsibility, the officer, to whom it is entrusted must frequently act on information, which in the interest of the public safety, cannot and ought not to be disclosed. As the information, or most of the information, on the basis of which an order has been made, cannot in many cases, be disclosed, the Courts are, quite properly, debarred from considering the propriety of the order and setting it aside, merely on the ground that, in their opinion, it was not an order, which should have been made. It is, however, equally well settled that this Court may examine the correctness of the recital contained in any such order, and if it comes to the conclusion that the recital is incorrect, may declare the order to be invalid and the detention of the individual concerned illegal. The orders, which have been made in all these cases, are in one and the same form, and it will be convenient, at this stage to set out one of them in extension:

No. 346 C (P) Whereas the Governor of Bihar is satisfied with respect to the person known as Dr Ashok Kumar Bose, that with a view to preventing him from acting in a manner prejudicial to the public order, it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred by cl (b) of sub-rule (1) of Rule 26, Defence of India Rules, the Governor of Bihar is pleased to direct that the said Dr Ashok Kumar Bose be arrested by the police wherever found and detained until further orders of the Governor of Bihar.

The material portions of the recital in the order are, in the first place, that 'the Governor of Bihar is satisfied with respect to the person named', and, secondly, that his detention is necessary 'with a view to preventing him from acting in a manner, prejudicial to the public order.' The word satisfied in Rule 26 (1) (b) must be construed as meaning reasonably satisfied. In 1942 A.C. 206, at p. 271 Lord Wright said:

Satisfied must mean 'reasonably satisfied'. It cannot import an arbitrary or irrational state of being satisfied. I find the distinction between 'reasonably satisfied' and 'has reasonable cause to believe' too tenuous.

If, therefore, any of these petitioners can show that there existed no grounds, on which the Governor of Bihar could, as a reasonable man, have been satisfied that their detention was necessary, they are, in my opinion, entitled to be released. Similarly, if they can show that the Governor of Bihar acted under a misapprehension as to the extent of the powers entrusted to him and did not in fact, order their detention with a view 'to preventing them from acting

in a manner prejudicial to the public order', but with some other ulterior object such as to regularize their illegal detention or to punish them for acts, which they had already done rather than to prevent them from doing or instigating the doing of similar acts again, they would, in my opinion, be entitled to be released. In such a case it could not be said that the Governor of Bihar, had, in law acted in good faith, and the order of detention would be, to use the expression of Pickford L.J., in (1918) 1 K.B.578 at p. 586, 'practically a sham order'. As I have already said the Crown merely produced copies of the orders, under which the petitioners are detained. No affidavits were put in, and it was contended by the learned Advocate-General and the learned Government Advocate that the Court was not entitled to go behind the orders of detention and pronounce on their validity. These orders, it was asserted, showed on their face that the petitioners were detained in legal custody. Much reliance was placed on the presumption 'omnia rite esse acta'. The power to order the detention of any person on the ground set out in the order had, it was argued, been delegated to the Governor of Bihar, and a presumption arose that, in exercising this power, the Governor of Bihar had acted regularly, that is that, before making any particular order, he had satisfied himself, on the materials placed before him, that it was necessary to detain the particular individual named in it with a view to preventing him from acting in a manner prejudicial to the public order. There can, of course, be no doubt but that this presumption does, in each case, arise. Viscount Maugham, in (1942) A.C. 206 at p. 225, said:

Just as the fact that the act of the Secretary of State acting in a public office is *prima facie* evidence that he has been duly appointed to his office, so his compliance with the provision of the statute or the order in council under which he purported to act must be presumed unless the contrary is proved.

The presumption, however, is and Viscount Maugham made this quite clear, a rebuttable presumption. It is, I think, important to bear in mind how the question as to the applicability of the presumption arose in (1942) A.C. 206.

[*Omitted: Observations on Viscount Maugham's judgment in 'Liversidge vs. Sir John Anderson' and other related judgments in England — Ed.*]

In some of these cases, as will appear presently, I am of opinion that the detention of the petitioners is unlawful, and that, in consequence, they must be released. The circumstances of each case are such, that the putting in of an affidavit in a stock form, or as one learned judge in England described it 'over the rubber stamp' would not, I think, have altered my decision. But even if it had been desirable to give the Crown an opportunity of putting in affidavits, it would have been quite useless to grant an adjournment for that purpose. The orders of detention were, in each such case, passed by the then Governor of Bihar, who was either His Excellency Sir Thomas Stewart or His Excellency Sir Thomas Rutherford, and Sir Thomas Stewart is no longer in this country and Sir Thomas Rutherford is no longer in this Province. An affidavit by some other officials that the material, on which, as against these petitioners, reliance was placed, was submitted to His Excellency before the orders of detention were made, would clearly be of no assistance to the Court, and indeed would be irrelevant. The question at issue is whether, in each of these cases, the Governor was satisfied as to the necessity of making an order of detention, and, clearly no one except the Governor himself is in a position to say what the state of his mind was at the time the orders were made. In this connection, I must refer to certain statements, which were made by Mr Baldeva Sahay, who appeared for one of these petitioners, in the course of his argument. Mr Baldeva Sahay

suggested that in some cases at least, and, perhaps, in many, the orders of detention had not, in fact, been made by His Excellency the Governor at all, but had been made by some other official subordinate to him. He went on to insinuate that was the reason why no affidavit had been put in by the Crown.

It will be remembered that, in certain similar cases, which occurred in Bengal, affidavits were put in and these affidavits disclosed that the orders of detention had not in any case, been made by His Excellency the Governor of Bengal, but had been made by the Home Minister, and, in some cases, by an Additional Secretary to the Government of Bengal. A majority of the judges of the Federal Court took the view that the power to make an order of detention under Rule 26 (1) (b) was conferred on the Governor, and could not be delegated under any rule made under S.59 (3), Government of India Act, and that in consequence, the detention of these persons was illegal. When pressed to disclose the grounds, on which he had made the assertions he did, Mr Baldeva Sahay was unable to say anything except that, in the emergency which arose, His Excellency Sir Thomas Stewart must have been far too busy with other matters of the greatest importance to bestow his personal attention on these case. I have satisfied myself, by reference to the rules of executive business, of which, in my opinion, this Court is entitled to take judicial notice, that there was an obligation on the Chief Secretary to Government to submit cases of this kind to His Excellency and to obtain his orders. In the absence of anything in the affidavits, this Court is bound to presume that the Chief Secretary to Government did, in fact, place the materials before His Excellency the Governor, and that the orders of detention were, in fact, made by His Excellency.

I need scarcely, I think, point out that, if in a particular case, this was not done, and the order of detention, although on the face of it, it purports to be an order of the Governor of Bihar, it was in fact, an order of some other and subordinate official, the detention of the person, against whom the order is made, has been illegal.

[*Omitted*: Observation on whether in such cases a suit for damages would be, and some other minor points raised by counsel for the petitioners – Ed.]

I turn now to the individual cases, and shall deal, in the first place, with criminal miscellaneous case No. 186, in which the petitioner is Tarkeshwar Prasad, as it stands in a category by itself. The order, made against this petitioner, purports to be an order of the Governor of Bihar, but it is not signed, as the orders in the other cases are, by the Chief Secretary, but by one D. Pires 'for Chief secretary'. We have been given to understand that Mr Pires is the political Department, and it is conceded that he is not authorized to authenticate, by his signature, orders made by the Governor of Bihar. That being so, the order, under which Tarkeshwar Prasad is detained, is an invalid order, and his detention under it is unlawful: vide (1860) 30 L.J. O.B. 38.

It is conceded that, in law, the onus is on the petitioners to show that the orders, which have been made against them, although, on their face, they appear to be valid orders, are not in fact, what they purport to be, and in consequence, their detention is unlawful. Admittedly, onus is one which it is very difficult to discharge. Such being the position, the question that really arises, in each of these cases, is whether or not the petitioners have succeeded in shifting the onus of proof on to the Crown. If, in any case, this has been done, then in the absence of any affidavit or other evidence on behalf of the Crown, this Court must I think, make an order for their discharge. As I have already said, the word 'satisfied' in the rule means 'reasonably satisfied' and, if any of the petitioners can show that there existed no grounds, on

which the Governor of Bihar could reasonably have come to the conclusion that their detention was necessary for the purpose stated in the orders, the orders will be deemed to be invalid. Unfortunately for the petitioners, the Governor of Bihar did not communicate to them the grounds on which he had made the order, and this Court is not entitled to compel their disclosure and examine into them. The utmost, therefore, that the petitioners could do was to give in their affidavits some account of their previous career and of the political opinions which they held, and suggest that their career having been, and their political opinions being such, the order made against them could not have been made on reasonable grounds. The majority of the petitioners may, perhaps, have thought that it was useless and hopeless to do this. At all events, with the exception of three, none of the affidavits contain matter of this kind. The affidavits, which do, are those which have been put in by the petitioners, Machkun Sharma, Maksudan Lal Sao and Parmanand Tribedi. Machkun Sharma, who is the petitioner in case No. 195, admitted that, prior to 1939, he had been an ordinary member of the Congress, and that, in that year, he had been the president of a Thana Congress Committee. He said that he had subsequently resigned and had joined the Kisan Sabha, of which he was the president in the district of Muzaffarpur from 1940 to 1942. He asserted that the objects of the Kisan Sabha were entirely different from the objects of the Congress. Maksudan Lal Sao, who is the petitioner in case No. 392, said that he had once been a member of the Congress, but that there had been acute difference between himself and the Congress office-bearers of the Lohardaga municipality, and that these had culminated in litigation in the criminal Courts. He asserted that he had ceased to be a member of the Congress sometime in 1941 and denied that he had taken any part whatever in any subversive movement. Parmanand Tribedi, who is the petitioner in case No. 302, said that he was a member of the central executive of the All India Radical Democratic Party and the Provincial Secretary of the Indian Federation of Labour. He went on to assert that the political aspirations of the All India Radical Democratic party were not at all the same as those of the Congress. I will assume that the statements made in these affidavits are correct in so far as both the Kisan Sabha and the All India Radical Democratic Party and the Indian Federation of Labour are concerned, and that these bodies had nothing to do with the disturbances which occurred last year. It does not, however, by any means, necessarily follow that individual members of any one of these bodies were not concerned in promoting them. It may no doubt be said that, if the leaders of these parties had disavowed any sympathy with the Congress and had called on their members to take no part at all in the civil disobedience movement, then before making any order of detention against an office bearer of one of these parties, the Governor of Bihar ought to have been very clear in his mind that the individual had, by some overt act or other, shown that he was not prepared to obey the instructions of his leaders. This Court can scarcely, however, assume that so obvious a consideration was not present to the mind of Sir Thomas Stewart, when he made the orders which he did against Parmanand Tribedi and Machkun Sharma. At first sight, there is, to my mind, more substance in the contention put forwarded by the other petitioner, Maksudan Lal Sao, that he had dissociated himself from the Congress some time in 1941 and had since then ceased to have anything to do with it or with any other political body. I find, however, that this very point was taken in a case, which occurred in England and was negatived.

[Omitted: Reference to the details of *Stuart vs Anderson and Morrison* – Ed.]

Rule 26 (1) (b) required the Governor of Bihar to be satisfied 'with respect to' the person

named in the order, that is, it required him to consider the case of each person, against whom an order was sought individually. The main point, which has been taken by the various counsel who appeared on behalf of the petitioners, is that there are circumstances which go to show conclusively, or at least to raise a presumption which has not been rebutted, that the Governor did not in fact, consider each case separately before he made an order. One circumstance relied on is that each one of these orders is in the same form. The necessity for detaining each of these petitioners was, however, the same, namely, 'to prevent him from acting in a manner prejudicial to the public order.' The Governor was not required to give the petitioners any indication of the reasons which had led to the making of the order, still less to set them out in the order itself. The orders also had to be made in conformity with the language used in the rule. That being so, the circumstance, that each one of the orders contains the same recital is, to my mind, a matter of no consequence at all. Another circumstance relied on is that the orders or some of them appear to have been cyclostyled. This argument is based on the order made in the case of Mr Phulan Prasad Varma, who is the petitioner in case No. 59. That order, as I have already said, would seem to be the only original order, which has been produced. The intrinsic evidence afforded by it certainly suggests that a number of orders of detention were made on a cyclostyle, that some clerk was given a type-written list of the persons, against whom orders were to be made, that this clerk cut each of the names out of the list and pasted it into the blank space in the cyclostyled form and then submitted these to the Chief Secretary for signature. The act of making out the orders in the proper form and obtaining on each of them the signature of the Chief Secretary was, however, a purely ministerial act. That a procedure of this kind was adopted, in order, presumably to save time and labour does not, in my opinion, create any kind of presumption that the case of each person, against whom an order was made, was not separately and properly considered by the Governor.

[Omitted: Reference to the details of the same case and Rex V. Home Secretary. *ex parte* Budd. (1941) -- Ed.]

Then, it is said in some cases, the interval, which lapsed between the apprehension of some of the petitioners and the making of the order of detention against them, was so very brief that the Governor of Bihar could not possibly have applied his mind to their individual cases. The case, in which this particular argument has been most vehemently put forward, is miscellaneous case No. 59 in which the petitioner is Mr Phulan Prasad Varma, who is an Advocate of this Court. In an affidavit, which has been sworn by a near relation of Mr Varma it is stated that he was arrested in the morning of 9th August 1942 by the Additional Superintendent of Police, Patna. It is further stated that no reasons for his being apprehended were given to him at the time. The Additional Superintendent of Police had, it is there stated, a slip of paper with him and Mr Varma and his relations gathered that it contained the names of certain persons, of whom he himself was one, who were to be apprehended immediately. The order of detention, under which Mr Varma is now confined, was made on the day following, that is on 10th August 1942. We have been asked to infer from these various circumstances, that Mr B.A.P. Sinha, the Additional Superintendent of Police, acted on his own initiative in arresting Mr Varma, and that his action was regularized on the day following by the Governor of Bihar, without taking any steps to satisfy himself that Mr Varma's detention was in fact, necessary. It has been concerted that, on 8th August 1942, the working committee of the congress sanctioned 'the starting of a mass struggle on non-violent lines on the widest possible scale'. Reference has also been made to resolution of the Government of India,

published immediately after the working committee of the Congress had taken this decision, in which it was stated that the Government of India had been aware for some days of dangerous preparations for the destruction of communications, the organization of strikes, sabotage and the like. The events which subsequently took place, certainly suggest that, in the Congress party, there were numerous persons who were not prepared to obey the injunctions of the working committee and confine themselves to what are ordinarily described as non-violent measures.

The learned Government Advocate has said that, when the executive authorities knew what was impending, they may be presumed to have taken steps to meet the danger, and in particular, to have considered whether in the interest of the public safety, it was necessary to apprehend and detain certain individuals. The inference, which he asks us to draw from the very brief interval which elapsed between Mr Varma's apprehension and the making of the order of detention against him, is that the Governor of Bihar had previously considered and decided that, in the interest of the public safety, it was necessary to arrest and detain him. This contention of Mr S.K. Mitra ought, in my judgment, to be accepted. The circumstance, that the Additional Superintendent of Police did not tell Mr Varma why he was arresting him, clearly suggests to my mind that, in arresting him and certain other individuals that day, Mr Sinha was acting not on his own initiative, but on instructions from some superior authority. If the order of detention, made against Mr Varma, was not actually made out and signed until after he had already been taken into custody, that can be explained on the assumption that number of such orders had to be made, and that it took rather more time to have them drawn up and signed then to communicate to the local Police the decision that had been taken to arrest the persons concerned. It is quite impossible to say that, in the emergency which was created by the decision of the working committee of the Congress, the executive was not entitled to take immediate action and to order the detention of persons who, they were satisfied, were likely to commit, encourage the commission of acts, 'prejudicial to the maintenance of public order.' The other cases, in which orders of detention were made prior to the commencement of the disturbances, are Miscellaneous case No. 57 in which the petitioners is one Kamala Kant Azad, Miscellaneous case No. 69 in which the petitioner is one Makhan Lal Mukherji, Miscellaneous case No. 150 in which the petitioner is one Sashan Gupta and Miscellaneous case No. 241, in which the petitioner is one Swami Viswanand. Another case, which stands on very much the same footing, is, in my opinion, Miscellaneous Case No. 151, in which the petitioner is one Anil Chandra Banerji. An order of detention was made against Anil Chandra Banerji on 21st August 1942, and he was apparently taken into custody on the same day. In the affidavits, which have been put in by or on behalf of these various persons, there is nothing to suggest that the Governor of Bihar, in making the orders which he did, did not act properly. The validity of all these orders has not, in my judgment, been successfully or indeed at all impugned.

In the remaining cases, the petitioners were arrested either during the continuance of the disturbances or, and this, I think, happened more often, after the disturbances had been brought under control or some considerable measure of control, in the local areas to which they belong. In each of those cases, recommendations were apparently made that they should be detained under R. 26 (1) (b), and, after a greater or shorter interval, an order of detention was, in each case, made against them. Under modern conditions, the existence of forces of internal disruption may be as great as or an even greater menace to a country, which is at war, than the presence of an external enemy on its frontiers. For that reason, the Legislature

has been fit to delegate to executive the power to detain persons without trial, and to debar the judiciary from examining into the reasons for their detention and pronouncing on their propriety. There can be no doubt but that a very large number of persons were concerned in the promotion of the disturbances, which occurred last year, and it may well be, until some individual had by his overt act or acts disclosed his connection with the subversive elements at the back of these disturbances, the necessity for detaining him was not apparent to the executive, the Legislature has made the Governor of Bihar the sole judge as to the necessity for his exercising this very exceptional power. It is not for judicature to say, and indeed it is quite impossible for it to say that no emergency any longer exists in which this power cannot properly be exercised. It is not, in my opinion, possible for us to say that the Governor of Bihar, looking to the overt act or acts, which had been done by certain of these petitioners, and to their previous associations and the views, which they may have expressed, could not have been honestly satisfied that it was necessary to detain them on the ground set out in these orders. It was contended by counsel for petitioners, and, I think, most vehemently by Mr Avadeshnandan Sahay that, inasmuch as this Court had issued rules, the onus of proof was thereby shifted to the Crown, and it was for the Crown to justify the detention. In nearly every case, the ground, on which the rule was issued, was that Rule 26 was ultra vires, and, before the applications came on for hearing, this had ceased to be a valid ground. This is not, however, of an importance, as, in the great majority of cases, the Court would, in any event have had to issue a rule, as no copy of the order of detention, which had been made against each of the petitioners, had been served on them. Mr Avadesh Nandan Sahay was correct in saying that the issue of rule had put the onus on the Crown, but that onus was discharged when orders of detention, which on the face of them were valid orders, or rather copies of such orders, were produced. The onus then again shifted on to the petitioners to show that, in point of fact, the orders, made against them, were not valid orders, that is, that in exercising the power, which he had, the Governor of Bihar had not, in law, acted bona fide. Except in the cases, to which I shall now proceed to refer, no evidence was produced by any of the petitioners to show that this may have been the case.

Singheshwar Prasad, who is the petitioner in Misc. Case No. 61 was arrested on 15th August 1942. The order, under which he is at present detained, was not made until 22nd February 1943. Rajeshwari Prasad Singh, who is the petitioners in Misc. Case No. 374 was arrested on 22nd May 1943, and the order of detention was not made until 18th September 1943. Harinam Gurgutia, who is the petitioner in Misc. Case No. 187, was arrested on 2nd September 1942, and an order of detention was made against him on 17th November 1942. The learned Advocate, who appears on behalf of Singheshwar Prasad, has said that, some time after his arrest his relations applied to the Chief Secretary for information as to the jail, in which he was detained, and that, although enquiries were made, the Chief Secretary was unable to supply the information. It is said that, subsequently, an application under Section 491, Criminal P.C., was made to this Court, and, on a rule being issued, fresh enquiries were made, and it was then ascertained that Singheshwar Prasad, who belongs to Patna and had been arrested there, had been removed to the Hazaribagh Central Jail. It was only then, it is said, and the facts appear to bear out the assertion, that an order of detention was made against him. Even if each of these petitioners was taken into custody by some police officer, purporting to act under Rule 129, Defence of India Rules, and this is denied in one case, and is, by no means, clear in the other two, it is plain that, when the orders of detention were made, the petitioners had already been detained for a period of more than two months, that is, their detention had

already, for some-time at least, and, in two cases, for a very appreciable length of time, been illegal.

Now, the power to arrest and detain, on mere suspicion, which has been conferred on the executive, is not intended to be exercised in this arbitrary and capricious manner. Sub-rule (1) of R.129, Defence of India Rules empowers a police officer to arrest on suspicion, and sub-rule (2) empowers him to commit any person he may so arrest to custody. Sub-rule (2), however, also require him to report the arrest forthwith to the Provincial Government, and sub-rule (4) requires the Provincial Government to consider the report and make an order either releasing the person detained or authorizing his further detention. The Provincial Government, for obvious reasons, is not required to come to a final decision immediately. It may think it necessary or desirable to have further enquiries made. It is, however, incumbent on it to see that such enquires are completed and a final decision taken within two months. If the Superintendent of the Jail, in which the person arrested is detained, does not receive any order from the Provincial Government within 15 days or within two months as the case may be, he is bound to release him. These provisions in the rules are intended to protect the individual against the caprice or malice of the subordinate and the carelessness or neglect of the higher officials. Whenever a person is arrested and detained on suspicion, a number of officials at once or within a very short space of time owe a duty to him. What is to be said when each one of these officials neglects that duty, when a man is thrown into jail and remains there for months on end without any kind of valid warrant or order until, eventually and, perhaps, only when this Court demands to know why he is detained, an order under R.26 is made against him? Is it not that the order is a mere cloak or device to cover up something illegal that has already been done that the recital in it is a mere sham? In exercising this power to detain on suspicion, the executive must act reasonably and in good faith, in such a way, that is, that a Court of law cannot say that it was obviously not acting bona fide because it was acting so unreasonably that no honest man could say that it could possibly have so acted. That is a well-known proposition of law, if it does act so unreasonably, there is ground for saying that it has not acted bona fide ((1916) 85 L.J.K.B. 1669 at p. 1672). When the orders of detention against these three men were made, the Provincial Government must have or ought to have realized that they had already been unlawfully detained for very appreciable periods. Was it not the reasonable course to take to order their release and to ascertain and take suitable action against those who had been responsible for their unlawful detention? Was it not highly unreasonable, by a single stroke of the pen, at once to deprive them of any remedy for the injury they had undoubtedly suffered and to authorize their further detention for an indefinite period? Two of them are pleaders in active practice and can scarcely be very dangerous characters. But even if their being at large was a source of far greater danger to the State then it would conceivably appear to be, was it not worth while taking the risk? Against whatever risk had to be run, there would have been set as a more than adequate counterpoise this, that the ordinary citizen had in some degree been re-assured that if the executive had been given power to frame a multitude of regulations encroaching in a variety of ways on his ordinary rights, the executive at least recognized an obligation to obey the Code which it itself had framed.

I turn next to a number of cases, in which the petitioners were apparently taken into custody originally on certain specific charges, on which they were eventually not prosecuted. Nageshwar Prasad Singh who is the petitioner in case No. 252, and Jogendra Prasad Sinha, who is the petitioner in case No. 103, were both arrested on 12th December 1942, and were produced

in the Court of the Subdivisional Magistrate at Begusarai to answer a charge under R.85 of the Defence of India Rules. The proceedings were apparently adjourned from time to time until on 20th March 1943, the Public Prosecutor withdrew from the prosecution under S.494, Criminal P.C. In the meantime, orders of detention had apparently been passed against each of them on 13th February 1943. Jagdish Prasad Santalia, who is the petitioner in case No. 295, was arrested with six other men on 19th March 1943 on a similar charge of having committed an offence under R. 88 of the Defence of India Rules. He was released on bail and remanded on bail until 11th May 1943, when he was again taken into custody. The order of detention was, in his case, made on 21st June 1943. Subsequently, on 17th July 1943, the Public Prosecutor intimated to the Court that he did not propose to adduce any evidence to substantiate the charge under R. 38, and Jagdish Prasad Santalia was, in consequence, discharged. Kumar Jha who is the petitioner in case No. 800, was the cashier of the Central Bank of India at Gaya. He was arrested on 10th August 1942, apparently for the part taken by him in a collision, which occurred on that day between the police and a crowd in the town of Gaya. In his affidavit, Kumar Jha has said that it was through a mere accident that he got mixed up in this fracas and sustained certain injuries. That may very possibly have been an incorrect statement. It appears, however, from his affidavit that the persons who were arrested along with him, were all tried, convicted and sentenced. He himself was not put on trial, the reason being that an order of detention was made against him on 21st August 1942. His affidavit contains a statement that he had 'never participated in any Congress activities'. Whatever his political sympathies may have been, his position as a cashier of well-known bank at Gaya, makes it I think, rather doubtful if he could have taken any very important part in promoting the disturbances. In each of these four cases there was, it is clear, an arbitrary interference on the part of the executive with ordinary course of justice.

Miscellaneous Case No. 58, in which the petitioner is, Jogeshwar Singh stands on a similar, but not precisely the same footing. Jogeshwar Singh was arrested on 16th September 1942, on suspicion of having taken part in the extensive looting, which occurred at the Mokameh railway station. He was, subsequently, tried on a charge of dacoity and was convicted, but on appeal, the conviction was set aside by the Special Judge. This was on 20th April 1943, and long before that, on 27th October 1942, an order of detention had been made against him. From what is contained in the Judgment of the learned Special Judge, it would seem that a judicial enquiry was held by a sub-Deputy Magistrate. This was not completed until 15th November 1942, so that the order of detention was made while it was still in progress. When a man is arrested and brought up before a Court on some definite and specific charge, it seems to me very undesirable and indeed quite wrong for an order of detention to be made against him before he has been tried on the charge and his guilt or innocence finally determined. If he is convicted and sentenced, the necessity for any order of detention ceases to exist, at least until he has served out his sentence, by which time conditions may have entirely altered. If, on the other hand, he is acquitted, and an order of detention is sought against him, surely, the official, on whom the responsibility of making such an order rests, should obtain and study a copy of the judgment. I do not say that, in no case, where a man has been acquitted, should or can an order of detention be made. Prosecutions may break down, and acts of the person against whom an order is sought, other than the act or acts which led to his being prosecuted, may quite properly, have to be taken into consideration. Clearly, however, in most of such cases, the act which led to man's prosecution, will also be the overt act, relied on or principally relied on to connect him with some subversive movement and justify the making of an order

of detention; and, if the official on whom the duty of making the order is cast, neglects to send for and study a copy of the judgment, it may very well be said that he has failed to act with due care and attention in the discharge of that duty.

Until the last war, the practice in England, in times of emergency, had invariably been to suspend the Habeas Corpus Acts, and, when the emergency came to an end, to pass an Act of indemnity. It is important to remember that, during such periods, any person, unlawfully detained, or who believed himself to be unlawfully detained, or any one on his behalf could still apply for a writ of habeas corpus, and the power of the Judges to grant such a writ was not taken away except in a very limited class of cases. The Suspension Acts, as they were properly called, merely provided that, when persons were detained in prison by warrant of the Privy Council or of one of His Majesty's Secretaries of State 'for high treason, suspicion of high treason or treasonable practices', no Judge or Justice of the Peace should 'bail or try' them without order from His said Majesty's Privy Council signed by six of the said Privy Councilors' till some date mentioned in the enactments. In other words, a person, who had been taken into custody and was detained on a charge of having committed any crime other than high treason, was still entitled to a speedy trial. To adopt the language, used in the Petition of Right, such a man was detained with cause shown' to which he was entitled to 'make answer according to law.' In the last war, the constitutional lawyers of the twentieth century devised another expedient more effectual, perhaps, in safeguarding the body politic against dangers greater than had ever before menaced it, and yet better calculated to interfere as little as possible with the personal freedom of the subject. The Legislature conferred on the executive a power to make regulations, both punitive and preventive, to create new offences and provide punishments for them and to prevent individuals committing certain offences by ordering their detention. The position however, with regard to the particular matter we are now considering, remained the same. A person, once arrested and charged with some crime, whether what he had done or was alleged to have done was, in time of peace, a crime at common law or by statute, or whether it had been a crime by regulation, is entitled to be brought before and tried by the courts of the land. In this respect, His Majesty's subjects in India are in no worse a position than His Majesty's subjects in Great Britain. Neither there nor here is it open to the executive, once a man has been brought before a Court of law on some specific charge, to substitute for the warrant, under which he is detained in jail awaiting his trial, an order of detention under R. 26, and then to deprive him of his right of clear himself of the charge by entering a *nolle prosequi* or intimating to the Court that they do not propose to adduce evidence against him.

In order to enable this Court to vindicate the rights of the subject, it may be necessary for it to rest its decision on a narrow and technical ground, namely, that the recital in the orders of detention, made in these five cases, is incorrect. But, on many occasions in the past, questions of the greatest importance affecting the right to personal freedom have been and had to be decided on such grounds. The word 'satisfied' in R. 26 (1) (b) must, as I have already said, be constructed as meaning 'reasonably satisfied.' At the moment when the Governor of Bihar signed the orders of detention against these five men, he could not have been reasonably satisfied that any such orders were at all necessary, as each of them was already detained under valid warrants. It was not open to the Governor to anticipate or pre-judge the decision of the Courts, and, in so far as he did so, a suspicion must necessarily arise that he was using the power, which had been conferred on him not for the purpose of preventing some danger to the State, but for the purpose of punishing some act or perhaps crime, which, in his opinion,

had already been committed and that he could not do. These five petitioners, namely, Nageshwar Prasad Singh, Jagendra Prasad Sinha, Jagdish Prasad Santalia, Kumar Jha and Jagdishwar Singh must be released.

There remain two cases, which present some analogy to the cases which I have just discussed. The conclusion, to which, however, I have eventually come is that they do not stand on quite the same footing and that, in them this Court no power to intervene. Mathura Prasad Misra, who is the petitioner in Miscellaneous case No. 208, was convicted of an offence under R. 88 (5), Defence of India Rules, on 28th July 1942. Shortly before the expiry of this sentence, on 19th April 1943, an order of detention was made against him. The Governor of Bihar was the sole judge of the continuance of the emergency which was created in August of last year, and, if on 19th April 1943, he thought it necessary to continue the detention of Mathura Prasad Misra, it is impossible for this Courts to say that he was wrong. The fact that this man had previously been convicted and sentenced for an offence under R. 88 (5) rather suggests, to my mind, that there probably was, in fact, good reason for the making of the order. Sitaram Dukhania who is the petitioner in Miscellaneous case No. 291, is apparently a native of Monghyr. In his affidavit he says that he left Monghyr and went to Calcutta on business on 3rd October 1942. On 12th October 1942, he was arrested with two other men in a room in a dharamsala, and, in this room, there was found a revolver, some ammunition for it and some other less incriminating articles. The three men were put on trial under the Arms Act in the Court of the Chief President Magistrate and were eventually acquitted. A copy of the judgment has not been produced, but, from what is stated in the affidavit, it would seem that the Chief Presidency Magistrate was not completely satisfied that it was the petitioner or either of the other two men who had put the revolver and ammunition where they were found. The order of acquittal was passed on 17th February 1943, and the order, under which Sitaram Dukhanis, is detained, was made on 9th March 1943. This order was presumably under sub-rule (5) of R. 129 when Sitaram Dukhania was sent to this province by the government of Bengal. The circumstances are, I think, scarcely sufficient to raise such a presumption as arises, for instance, in the case of Jogeshwar Singh that the action taken was punitive rather than preventive.

In the result, then the rules will be made absolute in the following cases, viz., Nos 61, 371, 187, 129, 108, 246, 300, 156 and the petitioners in these case viz., Singheshwar Prasad, Rajeshwar Prasad Singh, Haniram Gurgutua, Nageshwar Prasad Singh, Jogendra Prasad Sinha, Jagdish Prasad Santalia, Kumar Jha, Tarkesawar Prasad and Jogeshwar Singh, will be ordered to be released. In the remaining case the rule will be discharged.

Varma J. – I agree with observations of my learned brother and the conclusions arrived at by him. As it is a matter of some importance, I should like to say a few words on the subject. The petitioners have been detained under orders made by the Government of Bihar under R. 26 (1) (b), Defence of India Rules, and they pray that they should be released by this Court under S. 491, Criminal P.C. The relevant rules that come up for consideration are R. 129 and 26 (1) (b), Defence of India Rules. Rule 129 deals with the powers of arrest and detention of certain persons under certain circumstances. The persons who can exercise there powers are.

‘Any Police officer or any officer of Government empowered in this behalf by General or special order of the Central Government or of the Provincial Government.’ Rule 26 (1) is as follows:

‘The Central Government or the Provincial Government if it is satisfied with respect to any

particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of the public order, His Majesty's relations with foreign powers or Indian states, the maintenance of peaceful conditions in the tribal areas, or the efficient prosecution of the war, it is necessary so to do, may make an order . . . (b) directing that he be detained.' We are not concerned here with the Central Government but with the Provincial Government. The question that arises for consideration is, chiefly, the meaning of the expression 'satisfied' and the circumstances under which this Court can pass orders under S.491, Criminal P.C., for it is now well settled that the amendment of Ordinance 14 of 1943 is not ultra vires. As to what is meant by the expression 'if it is satisfied, we have to refer to some of the cases on that point. In 1942 A.C. 206 at p 271, Lord Wright said:

Satisfied must mean reasonably satisfied. 'It cannot import an arbitrary or irrational state of being satisfied. I find the distinction 'between reasonably satisfied' and 'has reason to believe' too tenuous.

In (1948) 1 K.P. 578 at p. 586 Pickford L.J. observed',

But I certainly am not inclined to say that in no case a Court go behind an order which on the face of it is valid ordering detention or custody. If that order is, if I may say so, practically a sham, if the purpose behind it is such as to show that the order is not genuine or bona fide, it seems to me the Court can go behind it.

From these two decisions it is clear that an order under R.26 (1) (b) to be valid must be based upon a reasonable satisfaction of the authority entitled to pass that order, and this Court can go behind the order if under the circumstances it is in a position to say that the ordering authority was not reasonably satisfied or that the order was not a bona fide order or that it was a sham order. This being the position, I should like to refer to some of the cases before us. I am referring to them in the order in which they have been referred to by my learned brother.

The first case that I would take up is Miscellaneous Case No. 186 of 1943. Tarkeshwar Prasad was arrested by the police under S.151, Criminal P.C., and lodged in the Gaya Central Jail. In September 1942, he was informed by the jailor verbally that he was detained under R.26 (1) (b), Defence of India Rules. The Crown has produced the order in this case. From the order it appears that one Mr D. Pires has signed the order for the Chief Secretary. 'The course of the argument, it transpired that Mr D. Pires is a Head Assistant, but nothing has been shown from which it can be gathered that he was authorized to sign this order. In these circumstances the detention is clearly illegal, and the authority to which my learned brother has referred clearly applies to this case.

The next case is the case of Singheshwar Prasad, Criminal Miscellaneous case No. 61 of 1943. Singheshwar Prasad was arrested on 15th August 1942. On the date the affidavit was sworn he was in the Central Jail at Hazaribagh. The order under which he is being detained was not passed till 22nd February 1943 a little more than six months after arrest. This order was passed during the pendency of a petition on his behalf for setting aside that order. The affidavit goes on to say that Singheshwar Prasad, who is an advocate, was arrested without warrant and without any accusation of having committed any offence under the Penal Code or any other enactment. It is not very clear under what section he was arrested by the Police. If it was an arrest under R.129, Defence of India Rules, the provisions of that rule have been clearly ignored. Clause (1) of this rule provides that, 'Any police officer or any other officer

of Government empowered in this behalf by General or special order of the Central Government or of the Provincial Government may arrest without warrant any person whom he reasonably suspects of having acted, of acting, or being about to act . . . in a manner prejudicial to the public safety or to the efficient prosecution of war . . . '

But after the arrest a duty is cast upon the officer who makes the arrest to forthwith report the fact of such arrest to the Provincial Government and pending the receipt of the orders of the Provincial Government may, subject to the provisions of sub-rule (3) which deals with the question of furnishing security by order in writing commit the person so arrested to such custody as the Provincial Government may by general or special order specify. To this sub-rule there are two important provisions, (1) that no person shall be detained in custody under this sub-rule for a period exceeding fifteen days without the order of the Provincial Government, and (2) that no person shall be detained in custody under this sub-rule for a period exceeding two months. The judgment of my learned brother has dealt with this aspect of the case. On the facts presented before us, it is clear that the two provisions have been ignored. Before the expiry of the two months, which is the longest period of detention allowed under this sub-rule, some step ought to have been taken for continuing the detention of the petitioner. The order of detention passed on 22nd February 1943 comes long after the period of two months expired, and one cannot help feeling that the order was passed to give his detention a semblance of legality. I am not satisfied that the order was passed bona fide (as defined in some of the decisions that have been quoted). I am therefore of opinion that his detention should be put an end to and he should be released.

In Criminal Misc. Case No. 374 Rajeshwari Prasad Singh is the petitioner. He was arrested on 22nd May 1943. The order under which he has been detained was passed on 18th September 1943. The petitioner in the Criminal Misc. Case No. 187 of 1943, Hari Ram Gutgutia, was arrested on 2nd September 1942 and the order of the detention was passed on 17th November 1942. In these two cases also it will appear that the order of detention was passed more than two months after the arrest, making their detention in jail at the time of the order illegal. In their cases also one cannot help feeling that the orders were made really to give a semblance of legality. Before I take up some of the other cases, I should like to observe that the powers of the Court are not to know the materials on which the orders were made. We cannot compel the Crown to disclose them and, therefore, we cannot pronounce on their validity or otherwise. But the power to order the detention of a man under R. 26, Defence of India Rules, is not an arbitrary power. There are limitations on it and this Court may and is bound to satisfy itself that these limitations have not been exceeded. If the executive have gone beyond them and have used the rule in a way not intended, the order is not a bona fide order but a 'sham' order, and this Court may interfere. In the case, which I have just referred to, I am not satisfied that the orders were orders passed bona fide under R.26, Defence of India Rules.

In Criminal Misc. Case. No. 122 of 1943, the petitioner Nageshwar Prasad Singh was arrested on 12th December 1942 on a charge under R.38, Defence of India Rules. On 20th March 1943 a petition was filed by the Court Sub-Inspector praying that he be permitted to withdraw the case, and the Magistrate ordered the case to be withdrawn under S.494, Criminal P.C., and discharged the accused persons. On that very date petition was filed by the Court Sub-Inspector praying that the petitioner be detained under R.129, Defence of India Rules. That prayer was allowed. But it appears that on 13th February 1943 an order under R.26 (1) (b), Defence of India Rules, was passed against the petitioner. In Criminal Misc. Case No. 295 of 1943, Jagdish Prasad Santalia, was arrested on 19th March 1943 on a charge of

having committed an offence under Rule 38. While on bail, he was taken in custody again on 11th May 1943 and the order of detention under R.26 (1) (b) was passed on 21st June 1943. Later, on 17th July 1943 when no evidence was led by the Public Prosecutor to substantiate the charge, the petitioner was discharged. In Misc. Case No. 300, the petitioner Kumar Jha (cashier of the Central Bank of Gaya) was arrested on 10th August 1942 and the order of detention was passed on 21st August 1942. The affidavit in this case shows that in a clash between a crowd and some constable he got mixed up in the crowd, although his presence there was accidental and he had gone there to fetch some medicine. The affidavit further says that the injuries on his person were caused by the brick bats thrown by the crowd. Now he was not the only person who was arrested on that date, but curiously enough, although a number of persons were sent up for trial and were ultimately convicted and sentenced, the petitioner was not put upon his trial. He was informed that his detention was under Rule 26 (1) (b). His prayer for bail was rejected on 20th August 1942. The petitioner further asserts that he is a bank employee and has nothing to do with the Congress activities, nor has he taken any part in any movement. In these cases also there were materials upon which the Court could proceed against each of these petitioners, and when the specific facts alleged against them were not substantiated, it is difficult to hold that their detention was ordered after the authorities were reasonably satisfied that they were likely to commit prejudicial acts. When there was evidence available which was either not relied upon or produced in Court against the petitioners, how can one feel satisfied that the evidence which remains unknown could be the basis of an order passed upon reasonable satisfaction. These petitioners should therefore be released from custody.

In Criminal Misc. Case No. 58 of 1943, the petitioner Jugeshwar Singh was arrested on 16th September 1942 in connection with certain disturbances at Mokameh railway station. On 20th April 1943 the conviction against the petitioner was set aside by the Special Judge. But several months before this order of acquittal an order under R.26 (1) (b) for detaining him was passed on 17th October 1942. As a matter of fact, it appears that an inquiry by a Special Magistrate was not completed till 15th November 1942. The position that we are reduced to is this, that he was arrested on a specific charge and while the inquiry was still proceeding the order for his detention under R.26 (1) (b) was passed, and the charge for which he was originally arrested failed. In these circumstances, although it cannot be said as a general proposition that simply because the man has been acquitted of a particular charge, no order under R.26 (1) (b) could be passed against him, in this particular case it is difficult to hold that the order for his detention was passed on the authorities being reasonably satisfied under the circumstances. In the result I agree with my learned brother that in Criminal Misc. Cases Nos 186, 61, 374, 187, 122, 103, 295, 300 and 58 of 1943 the persons detained should be released from custody. I have not referred to the other cases because on the materials on the record, I am not satisfied that any case for interference, in the present state of the law, has been made out, and I agree with the conclusions of my learned brother.



143: News item in *The Search Light* (dated 12.1.1944) (regarding judgement on *habeas corpus* application, and official comments and correspondence thereon)

File No. 25/11/44 – Home Poll (I)
[NAI]

The Search Light
12.1.44

Detention under Rule 26 of D.R.
Habeas Corpus Application in High Court.
Release of Nine Prisoners Ordered.

Patna, Jan. 10. – Mr Justice Varma and Mr Justice Shearer delivered this afternoon their separate but concurrent judgments in twenty-three 'Habeas Corpus applications preferred for the release of Mr Phulan Prasad Varma, Advocate, and Singheshwar Prasad, Advocate and Others who are being Detained Under Rule 26 (1) (b) of the Defence of India Rules.

Their Lordships ordered the release of Mr Singheswar Prasad and other 8 persons, namely, Rajeshwari Prasad Singh, Hari Ram Gutgutia, Nageshwar Prasad Singh, Joginder Prasad Singh, Jagdish Prasad Santhalia, Kumar Jha, Jogeshwar Singh and Tarkeshwar Prasad, observing that their Lordships were not satisfied that the orders for their detention were passed 'bona fide.'

Their Lordships dismissed the applications of Mr Phulan Prasad Varma and 13 others holding that on the materials on record I am not satisfied that any case of interference in the present state of law has been made out.

The main question that arose for consideration in these applications was chiefly the meaning of the expression 'satisfied' and the circumstances under which the court could pass orders under Section 491 of the Criminal Procedure Code.

The Advocate-General, in response to the rules, produced orders under which the petitioners were detained. None of the petitioners put in a copy of the orders under which he was detained as no copy was made available to any of them. They were merely given to understand by the Jailor of the prison in which each of them was detained that an order had been made against them under rule 26 (1) (b) by His Excellency. The High Court issued rule forthwith in view of the fact that no copy of the order was supplied to any of the petitioners. Although it was incumbent on the Crown to produce the original orders, in many cases only true copies were exhibited and some of them were not certified as true copies by any responsible officer. The orders in question were passed for the purpose of safeguarding the country, which is at war, against internal as well as external dangers. The orders were in one and the same form and cyclostyled and were signed by the Chief Secretary to Government. Their Lordships observed that Rule 26 (1) (b) of the Defence of India Rules was 'intra vires', and it was not open to a court of law, on an application for a writ of 'habeas', to enquire into and pronounce on the validity of reasons which led to

the making of the order. It was further observed that the High Court might examine the correctness of the recitals contained in these orders and declare the particular order to be invalid and the detention illegal, provided the court was satisfied that it was so. The material portion of the recital in the order was whereas the Governor of Bihar was satisfied. According to the authority of the English decision 'satisfied in Rule 26 (1) (b) must mean reasonably satisfied.' If in these petitions it could be shown that no grounds existed on which the Governor could, as a reasonable man, have been satisfied that the detention was necessary, then in their Lordships' opinion they were entitled to be released. Their Lordships were of the opinion that it lay with the Governor and the Governor only to decide if the emergency created by the Congress movement continued and to take action as he deemed necessary for the safety of the public and British India.

Applying this principle Their Lordships examined individual cases minutely and passed their orders, maintaining their detention or directing their release as they thought fit. At the same time, it was observed in some cases that the action was not fully justifiable and it seemed like a cloak to cover up something already done.

Their Lordships further observed that they could not compel the Crown to disclose the grounds on which the orders were made. But in law the power to order the detention of a man under Rule 26 was not an arbitrary power. There were limitations imposed on the ordering authority in the matter of passing such an order and the High Court was bound to satisfy itself whether these limitations had not been exceeded.

Dismissing the application of Mr Phular Prasad Varma, their Lordships observed that the Governor was satisfied that he should be detained. The Governor was aware from before that persons like Mr Varma were likely to assist the Congress movement and hence his arrest and detention was ordered as soon as the Congress Working Committee passed the civil disobedience resolution.

Official Comments

1. Copy of a letter No. D.739-DC/44, dated 25-1-44, from L.J.D. Wakely Esq., Dy. Secretary Defence Dept. New Delhi,

To the Chief Secy. Govt. of Bihar.

The Government of India have seen reports in the Press of a judgment dated the 10th January 1944 in which the Patna High Court have ordered the release of nine persons on the ground that the High Court was 'not satisfied that the orders for their detention were passed bona fide.' The Government of India would be grateful if a copy of the judgment could be forwarded to them as soon as possible.

(2)

Copy of a letter No. 371 L.R. IM-8/43 dated 2-2-44 from S.K. Das, ICS, Supdt. and Remembrancer of Legal Affairs, Bihar, to Dy. Secy. Def. Dept., New Delhi.

Subject: Requisition for a copy of the Patna High Court's Judgment in the case of Kamala Kanta Azad and others vs. — Emperor.

I am directed to forward a copy of the judgment delivered by the Patna High Court in the above mentioned case,¹ as desired in your letter No. D.739-DC/44, dated the 25th January 1944, addressed to the Chief Secretary to the Provincial Government.

(3)

Copy of a letter No. 2-DC(14)/44, dated 29-2-44, from Defence Dept., New Delhi, to All Provincial Governments and Chief Commissioners.

Please refer to this Department's secret letter No. 2-Dc(10)/43 dated the 8th January 1943.¹

2. In a recent case before a High Court, the Hon'ble judges commented unfavourably on the fact that a person detained by order under Defence of India Rule 26 (1) (b) had not at once been given a copy of the order under which he was detained. The Government of India consider it most desirable that copies of detention orders should be supplied immediately to persons detained thereunder, and I am to ask that, if the Provincial Government see no objection, they will issue instructions to that effect.

1 Doc. 142.

2 Doc. 141

144: Press Note on Ordinance III of 1944 (dt 15.1.1944)

File No. 44/57/43 - Home Poll (I)

[NAI]

Press Note

In the debate in the Council of State on Pandit Kunzru's resolution on November 24th, 1943, the Home Member explained that the Government had been considering for some time certain amendments to Defence Rule 26. The result of that consideration is given in the Restriction and Detention Ordinance (No. III of 1944) which is promulgated today.¹ The Ordinance reproduces in the form of a self-contained enactment, the provisions of Defence Rule 26, but incorporates certain new provisions to bring the law into closer conformity with the corresponding U.K. Regulation in the light of certain observations made last year by the Calcutta High Court. The brief effect of these new provisions is that no detention order will remain in force in future for more than six months unless reviewed and specifically extended from time to time; that all persons detained will be informed of the grounds for their detention to such extent as may be necessary to enable them to make representations against the order; and that each detained person will be given a specific right to make such representations and will be accorded every facility to do so. A further important provision of the Ordinance relates to the delegation of powers. As in England certain subordinate authorities may be empowered to detain or restrict the movements of persons subject to confirmation by a Secretary of State, so in India an order of detention or restriction passed under delegated powers will require the confirmation of the Government that delegated the powers. This new provision takes account of the remarks made by the Federal Court in the case of *K. Talpade V. King Emperor*² regarding the wide range of authorities by whom the power of detention might be exercised.

With the promulgation of this Ordinance, Defence Rule 26 will remain in abeyance. Orders passed under that rule are validated; but they will be deemed to have been passed on the date of the promulgation of the new Ordinance so that the persons detained thereunder will

have the benefit of the new provisions referred to above. Certain of these provisions might have been given effect to by amending Defence Rule 26 instead of by promulgating an Ordinance, but those which regulate the use of delegated powers would have entailed an amendment of Section 2 (4) and (5) of the Defence of India Act itself. It was considered more convenient therefore, to promulgate a self-contained Ordinance, thus obviating any doubts as to the legal validity of the provisions in the form of a rule made under the Defence of India Act.

The new Ordinance, it may be pointed out, will involve a review of all detention orders during the course of the next six months and that review will be carried out in the light, amongst other things, of any representations that the detained persons may wish to make under the new provisions. The essentially executive character of the action taken under the Ordinance is emphasized by the provisions which prohibit the disclosure, either in a court of law or otherwise, of the grounds of detention communicated to a detained person or of the representations that he may make to the detaining authority.

A separate Ordinance called the Military Safety (Powers of Detention) Ordinance, 1944, is being issued today.³ This gives power for the detention in the interests of Military safety of suspected persons entering India from enemy occupied territory and in no way affects the provisions of the Ordinance which will govern the detention or restriction of other classes of persons.

1 See Doc. 145 below.

2 Doc. 27.

3 Not printed

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Gazette of India extraordinary published by
authority — January 15, 1944
(Ordinance III of 1944)

File No. 44/57/43 – Home Poll (I)
[NAI]

New Delhi, Saturday, January 15, 1944

Government of India
Legislative Department
New Delhi, the 15th January, 1944

Ordinance No. III of 1944 **An** **Ordinance**

To empower the Central Government and the Provincial Government and any officer or authority to whom the Central Government or the Provincial Government may delegate its powers in this behalf to restrict the movements and actions of and to place in detention and detain certain persons, to

regulate the exercise of these powers and the duration of orders made in such exercise, and to confirm the validity of the past exercise of such powers under rule 26 of the Defence of India Rules.

WHEREAS an emergency has arisen which makes it necessary to empower the Central Government and the Provincial Governments and any officer or authority to whom the Central Government or the Provincial Governments may delegate its powers in this behalf to restrict the movements and actions of and to place in detention and detain certain persons, to regulate the exercise of these powers and the duration of orders made in such exercise, and to confirm the validity of the past exercise of such powers under rule 26 of the Defence of India Rules;

NOW, THEREFORE, in exercise of the powers conferred by section 72 of the Government of India Act, as set out in the Ninth Schedule to the Government of India Act, 1935 (26 Geo. 5, c.2), the Governor General is pleased to make and promulgate the following Ordinance—

1. *Short title, extent, application and commencement* — (1) This Ordinance may be called the Restriction and Detention Ordinance, 1944

(2) It extends to the whole of British India, and it applies also —

- (a) To British subjects and servants of the Crown in any part of India.
- (b) To British subjects who are domiciled in any part of India wherever they may be.
- (c) In respect of the regulation and discipline of any naval, military or air force raised in British India, to members of and persons attached to, employed with, or following, that force wherever they may be; and
- (d) To, and to persons on, ships and aircraft registered in British India wherever they may be.

(3) It shall come into force at once.

2. *Interpretation* — In this Ordinance, unless there is anything repugnant in the subject or context, 'Provincial Government' means, in relation to a Chief Commissioner's Province, the Chief Commissioner.

3. *Power to make orders restricting the movements or actions of or detaining certain persons* —

(1) The Central Government or the Provincial Government, if satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in Tribal Areas or the efficient prosecution of the war it is necessary so to do, may make an order

- (a) Directing such person to remove himself from British India in such manner, by such time and by such route as may be specified in the order, and prohibiting his return to British India;
- (b) Directing that he be detained;
- (c) Directing that, except in so far as he may be permitted by the provisions of the order, or by such authority or person as may be specified therein, he shall not be in any such area or place in British India as may be specified in the order;
- (d) Requiring him to reside or remain in such place or within such area in British India as may be specified in the order and if he is not already there to proceed to that place or area within such time as may be specified in the order;
- (e) Requiring him to notify his movements or to report himself or both in such manner at such times and to such authority or person as may be specified in the order;

- (f) Imposing upon him such restrictions as may be specified in the order in respect of his employment or business, in respect of his association or communication with other persons, and in respect of his activities in relation to the dissemination of news or propagation of opinions;
- (g) Prohibiting or restricting the possession or use by him of any such article or articles as may be specified in the order;
- (h) Otherwise regulating his conduct in any such particular as may be specified in the order:

Provided that no order shall be made under clause (a) of this sub-section in respect of any British Indian subject of His Majesty:

Provided further that no order shall be made by the Provincial Government under clause (c) of this sub-section directing that any person ordinarily resident in the Province shall not be in the Province.

(2) An order made under sub-section (1) may require the person in respect of whom it is made to enter into a bond, with or without sureties; for the due performance of, or as an alternative to the enforcement of, such restrictions or conditions made in the order as may be specified in the order.

(3) If any person is in any area or place in contravention of an order made under the provisions of this section, or fails to leave any area or place in accordance with the requirements of such an order, then, without prejudice to the provisions of sub-section (8), he may be removed from such area or place by any police officer or by any person acting on behalf of Government.

(4) So long as there is in force in respect of any person such an order as aforesaid directing that he be detained, he shall be liable to be removed to and detained in such place and under such conditions, including conditions as to maintenance, discipline and the punishment of offences and breaches of discipline, as the Central Government or the Provincial Government, as the case may be, may from time to time by general or special order specify.

(5) Where the power to specify the place of detention is exercisable by the Provincial Government, the power of the Provincial Government shall include power to specify a place of detention outside the Province:

Provided that —

- (a) No such place shall be specified save with the previous consent of the Provincial Government of the Province in which the place is situated, or, where the place is situated in a Chief Commissioner's Province, of the Central Government;
- (b) The power to specify the conditions of detention shall be exercised by the Provincial Government of the Province in which the place is situated, or, where the place is situated in a Chief Commissioner's Province, by the Central Government.

(6) If the Central Government or the Provincial Government, as the case may be, has reason to believe that a person in respect of whom such an order as aforesaid has been made directing that he be detained, has absconded or is concealing himself so that the order cannot be executed, that Government may —

- (a) Make a report in writing of the fact to a Presidency Magistrate or a Magistrate of the first class having jurisdiction in the place where the said person ordinarily resides; and thereupon the provisions of sections 87, 88 and 89 of the Code of Criminal Procedure,

1898 (V of 1898) shall apply in respect of the said person and his property as if the order directing that he be detained were a warrant issued by the Magistrate;

- (b) By order notified in the official Gazette direct the said person to appear before such officer, at such place and within such period as may be specified in the order; and if the said person fails to comply with such direction he shall, unless he proves that it was not possible for him to comply therewith and that he had, within the period specified in the order informed the officer of the reason which rendered compliance therewith impossible and of his whereabouts, be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both.

(7) The Central Government or the Provincial Government may, by general or special order made with the consent of the Crown Representative, provide for the removal of any person detained by it under sub-section (1) to, and for the detention of such person in, any area administered by the Crown Representative.

(8) If any person contravenes any order made under this section, other than an order of the nature referred to in clause (b) of sub-section (6), he shall be punishable with imprisonment for a term which may extend to five years, or with fine, or with both, and if such person has entered into a bond in pursuance of the provisions of sub-section (2), his bond shall be forfeited, and any person bound thereby shall pay the penalty thereof, or show cause to the satisfaction of the convicting Court why such penalty should not be paid.

(9) Any order made under the powers given by this section shall have effect notwithstanding anything inconsistent therewith contained in any Act, Ordinance or Regulation other than this Ordinance, or in any instrument having effect by virtue of any such Act, Ordinance or Regulation.

4. *Powers of photographing, etc., persons* – (1) The Central Government or the Provincial Government may, by order, direct that any person, in respect of whom an order has been made under sub-section (1) of section 3, shall –

- (a) Allow himself to be photographed,
- (b) Allow his finger and thumb impressions to be taken,
- (c) Furnish specimens of his handwriting and signature, and
- (d) Attend at such time and place before such authority or person as may be specified in the order for all or any of the purposes mentioned in this sub-section.

(2) If any person contravenes any order made under this section, he shall be punishable with imprisonment for a term which may extend to six months or with fine, or with both.

5. *Delegation of powers and duties of Central and Provincial Governments to other authorities, and to officers* – (1) The Central Government may by order direct that any power or duty which under section 3 or section 4 is conferred or imposed upon the Central Government shall, in such circumstances and under such conditions, if any as may be specified in the direction, be exercised or discharged –

- (a) By any officer or authority subordinate to the Central Government, or
- (b) By any Provincial Government or by any officer or authority subordinate to such Government.

(2) A Provincial Government may by order direct that any power or duty which by or under section 3 or by section 4 is conferred or imposed on the Provincial Government shall, in such circumstances and under such conditions, if any, as may be specified in that direction,

be exercised or discharged by any officer or authority, not being (except in the case of a Chief Commissioner's Province) an officer or authority subordinate to the Central Government.

6. *Validation of orders made under rule 26, Defence of India Rules* – (1) No order made before the commencement of this Ordinance under rule 26 of the Defence of India Rules shall after such commencement be deemed to be invalid or be called in question on ground merely that the said rule purported to confer powers in excess of the powers that might at the time the said order was made be legally conferred by a rule made under section 2 of the Defence of India Ordinance, 1939 (V of 1939) or under section 2 of the Defence of India Act, 1939 (XXXV of 1939).

(2) Every such order shall on the commencement of this Ordinance be deemed to have been, and shall have effect as if it had been, made under this Ordinance, and as if this Ordinance had been in force at the time the order was made:

Provided that section 7 and section 9 of this Ordinance shall apply in relation to any order made under clause (b) of sub-rule (1) of rule 26 of the Defence of India rules as if that order had been made on the date of the commencement of this Ordinance, and section 8 of this Ordinance shall not apply to any such order.

(3) Nothing in the foregoing provisions of this section shall apply to any such order which has already been cancelled by or in consequence of an order of a competent Court:

Provided that any such cancellation shall not prevent the making under this Ordinance of a fresh order to the same effect as the order cancelled.

7. *Grounds of order of detention to be disclosed to person affected by the order* – Where an order is made in respect of any person under clause (b) of sub-section (1) of section 3, as soon as may be after the order is made, and where before the commencement of this Ordinance an order has been made in respect of any person under clause (b) of sub-rule (1) of rule 26 of the Defence of India Rules, as soon as may be after the commencement of this Ordinance, the authority making or which made the order shall communicate to the person affected thereby so far as such communication can be made without disclosing facts which the said authority considers it would be against the public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in the opinion of such authority sufficient to enable him to make if he wishes a representation against the order, and such person may at any time thereafter make a representation in writing to such authority against the order, and it shall be the duty of such authority to inform such person of his right of making such representation and to afford him the earliest practical opportunity of doing so.

8. *Order of detention made in pursuance of delegation under section 5 to be reported to Government for confirmation* – When any order is made in respect of any person under clause (b) of sub-section (1) of section 3 by an officer or authority empowered in pursuance of section 5, that officer or authority shall forthwith report the fact to the Government to which he or it is subordinate, and that Government shall, after considering all the circumstances of the case including any representation made by the person affected by the order, make an order confirming or cancelling the order.

9. *Duration of orders of detention made under section 3* – No order made or deemed under the provisions of section 6 to have been made under clause (b) of sub-section (1) of section 3 shall be in force for more than six months from the date on which it is made:

Provided that the Government which made the order, or where the order was made by an officer or authority empowered in pursuance of section 5 of this Ordinance or sub-section

(4) or sub-section (5) of section 2 of the Defence of India Ordinance, 1939 (V of 1939), or the Defence of India Act, 1939 (XXXV of 1939), the Government to which such officer or authority is subordinate, may after a further consideration of all the circumstances of the case direct that the order shall continue in force notwithstanding that the said period of six months has expired, and the order as so extended shall continue in force for a further period of six months and thereafter if and so often as it is again extended by a further similar direction made in the same manner.

10. *Saving as to orders* — (1) No order made under this Ordinance, and no order having effect by virtue of section 6 as if it had been made under this Ordinance, shall be called in question in any Court, and no Court shall have power to make any order under section 491 of the Code of Criminal Procedure, 1898 (V of 1898) in respect of any order made under or having effect under this Ordinance, or in respect of any person the subject of such an order.

(2) If at the commencement of this Ordinance there is pending in any Court any proceeding by which the validity of an order having effect by virtue of section 6 as if it had been made under this Ordinance is called in question, that proceeding is hereby discharged.

(3) Where an order purports to have been made by any authority in exercise of any power conferred by or under this Ordinance, the Court shall, within the meaning of the Indian Evidence Act, 1872 (I of 1872), presume that such order was so made by that authority.

11. *Disclosure of grounds of detention, etc., communicated or of contents of written representation made under section 7* — (1) No Court shall allow any statement to be made or any evidence to be given before it of the substance of any communication made under section 7 of the grounds on which an order under clause (b) of sub-section (1) of section 3 has been made against any person, or of any particulars disclosed in connection therewith under section 7, or of any representation made under that section against any order, and, notwithstanding anything contained in the Indian Evidence Act, 1872 (I of 1872), no Court shall be entitled to require any public officer to produce before it, or to disclose the substance of, any such communication of grounds, particulars disclosed, or representation made.

(2) It shall be an offence punishable with imprisonment for a term which may extend to two years, or with fine, or with both, for any person to disclose or publish without the previous authorization of the Central Government or the Provincial Government any contents of any such communication of grounds, particulars disclosed, or representation made:

Provided that nothing in this sub-section shall apply to a disclosure made by a person the subject of an order under this Ordinance to his legal adviser.

12. *Protection of action taken under this Ordinance* — No suit, prosecution or other legal proceeding shall lie against any person for anything in good faith done or intended to be done in pursuance of this Ordinance.

13. *Application of other laws not barred* — The provisions of this Ordinance shall be in addition to, and not in derogation of, the provisions of any other Act, Ordinance or Regulation for the time being in force.

Wavell,
Viceroy and Governor General.



146: Editorial in *The Search Light* published in Patna (22.1.44)

File No. 25/11/44 – Home Poll (I)

[NAI]

Unlawful Detention

In disposing of a batch of *habeas corpus*' applications recently in the Patna High Court, Mr Justice Shearer,¹ sitting with Mr Justice Varma, made some trenchant criticisms of the very improper and undesirable method followed by Government in several cases of making orders under Rule 26 of the Defence of India Rules after more than two months of arrests of persons detained under Rule 129 D.I.R. No person under this Rule 129 can be detained in custody for a period exceeding 15 days without the order of the Provincial Government and no person can be detained in custody for a period exceeding two months. In other words, a police officer arresting a person under Rule 129 has got to obtain the sanction of the Provincial Government within 15 days and the Provincial Government can make an order of detention under this rule for not more than two months. But there have been cases—not one or two but a good number of them—and we will not be surprised if there are some more cases yet unnoticed—in which no orders were passed at all, although the prisoners concerned were arrested under Rule 129 and continued to be detained under that Rule for longer than two months. His Lordship, in the course of the judgment, very justly points out that if the Superintendent of the jail, in which the person arrested is detained, does not receive any order from the Provincial Government within 15 days or within two months as the case may be, he is bound to release him. These provisions in the rule are intended to protect the individual against the caprice or malice of the subordinates and the higher officials.' But as a matter of fact, what has actually happened is that men have been thrown into jail and have remained there for months on without any kind of valid warrant or order until eventually and perhaps only when the matter has been brought to court and the latter has demanded as to why they were so detained that orders under Rule 26 are made against them. His Lordship very justly characterizes such an order 'as a mere cloak or device to cover up something illegal that has already been done that the recital (in the Order under Rule 26) is a mere sham.' His Lordship regards it as highly unreasonable to pass such an order and thereby deprive the prisoners concerned of any remedy for the injury done to them. The Provincial Government must realise that these prisoners have already been unlawfully detained for appreciably long periods and therefore, in the opinion of His Lordship, it is but reasonable to order their release and to ascertain and to take suitable action against those who have been responsible for their unlawful detention. We do not know if the Government of Bihar have seen this judgment of their Lordships Varma and Shearer J.J. If not, they should at once procure a copy of it, study it carefully and act up to the very just observations and sound suggestions made therein. If there are any more such prisoners left, who are being unlawfully detained without and valid warrant or order, they should be released at once, instead of making an order against them under Rule 26.

1. Doc. 142 above.

147: Copy of the minutes of the proceedings of the meeting of the Calcutta Corporation — (dt 26.1.1944)

Govt. of Bengal (Home) File No. 6/44
[Bengal State Archives]

(Proof Copy)

Minutes of the Proceedings of the Adjourned Meeting of the Corporation of Calcutta Under Section 58 (1) of the Calcutta Municipal Act 1923 held in the Council Chamber, Central Municipal Office Buildings, on Wednesday the 26th January 1944 at 5 p.m.

Present:

Syed Badrudduja, Esq., M.L.A.* (Mayor).
Anandi Lal Poddar, Esq. (Deputy Mayor).

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|-----------------------------------|--------------------------------|
| Debendranath Mukherji, Esq. | Debabrata Mukherji, Esq. |
| Sir Hari Sanker Paol, Kt., M.L.A. | Phanindra Nath Brahma, Esq. |
| Amulya Chandra Mitter, Esq. | Amarendra Nath Mukherjee, Esq. |
| R.K. Newatia, Esq. | Bidhu Bhusan Sarcar, Esq. |
| Mudan Mehan Barman, Esq. | Narendra Nath Dalal, Esq. |
| Gosta Behari Sett, Esq. | Jogesh Chandra Ghose, Esq. |
| Indu Bhusan Beed, Esq. | Fakin Chandra Ghose, Esq. |
| D.J. Cohen, Esq., M.L.C. | Shamsui Haque, Esq. |
| I.J. Cohen, Esq. | Abdul Matin, Esq. |
| Harihar Das Chowdhury, Esq. | J.H. Method, Esq. |
| Dr Subodh K. Sarkar. | J.N. Smart, Esq. |
| Rejoy Kumar Banerji, Esq. | Dr S.C. Law. |
| Dhirendra Nath Ghosh, Esq. | P.N. Sen, Esq. |

Mr G.B. Sett said: Mr Mayor, I want to mention a matter of urgent public importance. We believe that it is an inalienable right of the Indian people as of any other people, to have freedom and enjoy the fruits of their toil and have the necessities of life so that they may have full opportunities of growth . . .

The Mayor: What are you reading out?

Mr G.B. Sett: I am reading out the Congress Independence pledge.

Continuing Mr Sett said: We believe also that if any Government deprives a people of these rights and oppresses them, the people have a further right to alter it or to abolish it. The British Government in India has not only deprived the Indian people of their freedom but has based itself on exploitation of the masses and has ruined India economically politically, culturally and spiritually we believe therefore that India must sever the British connection and attain Purna Swaraj' or complete independence.

We recognize that the most effective way of gaining our freedom is not through violence.

India has gained strength and self-reliance and marched a long way to Swaraj, following peaceful and legitimate methods and it is by adhering to those methods that our country will attain independence.

We pledge ourselves anew to the independence of India and solemnly resolve to carry out non-violently the struggle for freedom till Purna Swaraj is attained.

We believe that non-violent action in general and preparation for nonviolent direct action in particular require successful working of the constructive programme of Khadi, communal harmony and removal of untouchability. We shall seek every opportunity of spreading goodwill among fellow men without distinction of caste or creed. We shall endeavour to raise from ignorance and poverty those who have been neglected and to advance in every way the interests of those who are considered to be backward and suppressed.

We know that though we are out to destroy the imperialistic system, we have no quarrel with Englishmen whether official or non-official. We know that distinction between caste Hindus and Harijans must be abolished and Hindus have to forget these distinctions in their daily conduct. Such distinctions are a bar to non-violent conduct. Though our religious faith may be different in our mutual relations we will act as children of Mother India, bound by common nationality, and common political and economic interest.

Charka and Khadi are integral part of our constructive programme for the resuscitation of the seven hundred thousand villages of India and for the removal of the grinding poverty of the masses. We shall, therefore, spin regularly, use for our personal requirements nothing but Khadi and so far as possible products of village handicrafts only and endeavour to make others do likewise.

We pledge ourselves to the disciplines observance of Congress Principles and Policies and to keep in readiness to respond to the call of the Congress whenever it may come for carrying on the struggle for the independence of India.

Bande Mataram!

I move that the House do stand adjourned on account of the Independence Day.

Mr I.B. Beed seconded.

Mr J.H. Method: I object to adjournment and I want my objection to be recorded.

The Mayor: What day will you adjourn the meeting to? As there are some urgent items especially in Agenda B why not make it Friday next?

The House agreed.

The motion for adjournment was carried

Resolved

That the House do stand adjourned to Friday next at 5 p.m., on account of the Independence Day.

Syed Badrudduja
Mayor.

26th January 1944.
C.P.-3053-25-2-44-3



148: Report in the *Amrita Bazar Patrika* on Independence Day Pledge read out in the Calcutta Corporation

Govt. of Bengal (Home) File No. 6/44
[Bengal State Archives]

Amrita Bazar Patrika

Thursday, January 27, 1944

Calcutta Corporation Independence Pledge

Read for first time.

Meeting Adjourned without transacting any business.

For the first time in the annals of the Calcutta Corporation the pledge of independence, as formulated by the Indian National Congress, was read on the floor of the House on Wednesday.

The member setting up the precedent is Councillor Goshto Behari Set, representing Ward No. VI.

As the House met Mr Sett drew the attention of the Mayor to what he described as a matter of urgent and public importance. He then commenced reading out the pledge and finished it with the words 'Vande Mataram.'

Mr Sett subsequently moved that the House be adjourned in commemoration of the Independence Day. The motion was seconded by Mr Indra Bhusan Beed.

Mr J.H. Method, leader of European group, wanted that his dissent to the motion for adjournment might be put on record.

The meeting was adjourned without transaction of any business till Friday afternoon.



149: Government of Assam to the Government of India (firing at Dhakiajuli)

File No. 3/61/43 – Home Poll (I)
[NAI]

Government of Assam

Letter No. C.150/42/122.
Home Department.
Confidential Branch.

From
H.G. Dennehy, Esq., C.S.I., C.I.E., I.C.S.,
Chief Secretary to the Government of Assam.

To
The Secretary to the Government of India,
Home Department.

Shillong, the 28th January 1944.

Reference: Home Department Express Letter No. 3/61/43 – Poll (I) of the 15th December 1943.¹

Sir,

I am directed to state below the present position with regard to the cases of those convicted of rioting at Dhakiajuli.²

2. The situation has of course been altered by the finding that trials under the Special Courts Ordinance were illegal, and this Government were advised that it would be fruitless to apply to the High Court of Calcutta for enhancement of sentence. The matter could therefore only be pursued in the course of re-hearing of the cases under the direction of the High Court. Of the 27 persons sent up for trial by the Special Magistrate, 12 had been discharged under section 494 Criminal Procedure Code as the prosecutions against them were withdrawn, 8 were discharged under section 253 (1) Criminal Procedure Code as there was no *prima facie* evidence against them, 4 were acquitted under Section 258 (1) Cr. P.C. and 3 were convicted. Two of the convicted accused have been released on expiry of their sentences and only one is still serving his sentence. The accused who is undergoing imprisonment has declined to prefer an appeal against his conviction. The sessions Judge, Assam Valley Districts, who had been moved to set aside the orders passed in this case and to direct the accused to be retried or acquitted as the case might be (since all trials under the Ordinance had been declared illegal), declined to move in the matter because the accused has not appealed to the Lower Appellate Court, as intended by the High Court. The High Court has, therefore, been moved to pass the necessary orders, and the case is set down for hearing on the 24th January 1944. The question of expunging certain passages

from the judgment will be urged at the hearing, and there result will be communicated in due course.

I have the honour to be,
Sir,
Your most obedient servant,

H.G. Dennehy
Chief Secretary to the Government of Assam

1. Not printed.
2. See Doc. 4.

150: Government of India to the Government of Bengal (regarding the report in the *Amrita Bazar Patrika*)

File No. 3/2/44 - Home Poll (I)
[NAI]

Dated 28th January, 1944.

S.No. 7
Olver G.O.I. (Home) to Chief Secretary, Bengal.

Continuation of our express letter No. 3/2/44 - Poll (I) dated 20th January,¹ regarding Independence Day, 1944.

We observe that the Calcutta edition of *Amrita Bazar Patrika* of January 26th displayed the so called National Flag prominently on the front page and carried on the second page a bowdlenized version of the Independence pledge, from which the more obviously seditious portions had been omitted, asterisks being left to mark the omissions.²

We presume that you will have consulted legal opinion as to whether the reproduction of the pledge in this form provides grounds for action against the paper and we should be glad to be informed urgently of the result of this consultation and to know what action, if any, you propose to take.

S.J.L. Olver
Signed Olver

1. Not printed.
2. Not printed - See Doc. 148



151: Government of Punjab to the Government of India (treatment of security prisoners)

File No. 44/2/43 - Home Poll (I)

[NAI]

From

F.C. Bourne, Esquire, C.S.I., C.I.E., I.C.S.,
Chief Secretary to Government, Punjab.

To

The Additional Secretary to the Government of India,
Home Department, *New Delhi*.

Dated Lahore, the 28 January, 1944.

Memorandum

Reference your express letter No. 44/2/43 - Poll (I), dated January the 17th, 1944.¹

2. For the reasons stated in my express letter No. S-701-BDSB, dated June the 14th, 1943,² D.O. letter No. S-3143-BSB, dated September the 18th/21st, 1943,³ and in the last paragraph of my D.O. letter No. Sec-1793-SB, dated December the 23rd, 1943,⁴ the Punjab Government consider it unwise to impose any arbitrary time limit on interrogations in police custody. In addition to the reasons already stated against establishing a convention that the total period of special custody for interrogation should not ordinarily exceed two months, there is the consideration, which the Punjab Government consider as most important, that any attempt, to 'force the pace' may lead to malpractices and consequently to the extraction of misleading statements which would not only be dangerous to Intelligence but would also discredit the whole system of interrogation. Moreover, experience has shown that one of the most important factors in overcoming the natural reluctance of prisoners to incriminate themselves and their associates is the realization that their period of detention is not restricted to any prescribed length. Once prisoners realise that the normal period is two months their resistance to telling the truth will be greatly strengthened.

3. Extensions of the period of detention in police custody for purposes of interrogation beyond two months are always carefully considered by the Punjab Government before they are sanctioned, the conditions of detention being determined in accordance with the Punjab Security Prisoners Rules. In the cases of Central Government prisoners sent to the Punjab for interrogation the Punjab Government feel that they are in a better position than the Central Government to determine whether detention for more than two months in police custody is necessary, and regret that unless the Government of India are prepared to allow them to determine the period of detention necessary for interrogation they will not be able to accept Central Government prisoners for interrogation in future.

1. Not printed.

2. Doc. 37.

3. Not printed.

4. Doc. 97 in Chapt. I - Sect. B.

152 Official Note by Vishnu Sahay on Punjab Government's letter

File No. 44/2/43 - Home Poll (I)

[NAI]

Official Notings

The first sentence of para 3 of the Punjab letter¹ really meets our point about Punjab's own 'interrogaters', the object is to see that prolonged detention in police custody does not go unconsidered by Government.

The Punjab are, however being unreasonable (their touchiness on the subject of interrogation methods is probably the explanation) in demanding that they and they alone should be the final judges of the period in the case of Central Governments 'interrogaters'. Since their methods have produced results and we have been assured that malpractices are not resorted to, we had better yield a bit and ask merely that we should be kept informed, whenever the period of two months is proposed to be exceeded. That will prevent the sort of thing that has happened - police custody for months on end without our knowing anything about it - and in practice in the unlikely event of detention being reasonably extended, we could I suppose bring some sort of pressure on them to curtail the period without necessarily making them wash their hands all altogether off interrogation on our behalf.

V. Sahay

1.2.44.

Additional Secretary.

1 Doc 151.

153: Official Notings reg. C.L.A. questions about Forward Block prisoners (dt 2.2.1944) (extracts)

File No. 22/18/44 - Home Poll (I)

[NAI]

Notes in the Home Department

... Put up. There are altogether six questions, four of which are down for the 11th and two for the 17th instant. As they relate to the same persons they have been brought on to the same file.

We have received no representations either from Shankar Lal, Dwijen and Aurobindo Bose or any other person regarding their maltreatment in the Punjab. As regards Sardar Sardul Singh it appears that he made a representation to the Punjab Government in 1942 about his maltreatment but it was not forwarded to the Government of India, though the Punjab Government said that the facts of the matter were reported. These papers are not

traceable in office. Office is not aware of any representations made by the Sardar to the Hon'ble Member. His file is N.G.O.¹ Attention is however invited to questions and answers relating to him in the legislative Assembly in F. 22/20/42 and 22/4/43 – Poll (I). It appears from these papers that certain special amenities over and above those allowed by the Security prisoners Rules were originally granted to the Sardar but were subsequently withdrawn owing to the prisoner's unsatisfactory behaviour.

As regards interrogation of persons in police custody detained under the Defence of India Rule 26 in the Punjab we have already impressed on the Punjab Government the desirability of keeping the period as short as possible, and the matter is still the subject of correspondence with that Government. So far as office is aware the non-Punjabi detenus sent to the Lahore fort were Lala Shankar Lal Basal, Dwijen Bose, Aurobindo Bose and lately Jai Prakash Narain. D.I.B. will no doubt have the full information.

I have removed No. 20, which concerns General policy rather than specific matters regarding these prisoners, and can most suitably be dealt with separately.²

2. This is an awkward batch of questions. The first thing is, I think, to have a decision of policy as to how far we are prepared to answer. Since the prisoners concerned are all Central Government prisoners, I am afraid we can hardly refuse to answer most of the questions, even though in many cases our answer may be merely a denial of the allegations made. If this is agreed, then we should I think at once forward the whole batch to the Punjab and ask them urgently for material for reply; for although we can from our own and D.I.B.'s records give answers to a good many of the points raised, all the questions affect the Punjab and it will be as well in each case to have a clear indication of how far the Punjab Government would wish us to go.

(S.J.L. Olver).
2.2.44.

V. Sahay.
2.2.44

These questions are extremely long and they contain a great deal of repetition and argument or insinuation. They may be shortened in their admitted form. It would be possible to answer some parts of some question by reference to previous answers, and other parts from such information as we possess. But a complete reply to all of them could hardly be given without a request for material from the Punjab Government.

I would be inclined to give a simple answer to the first four questions which are due for answer on the 11th February some what on the following lines.

The Government of India are not in possession of all the detailed information required to give a complete answer to all the different parts of those questions. The main object of the Hon. Member appears to be, however to suggest that Sardar Sardul Singh Caveesher and certain other persons, who have been detained in the Lahore Fort have been subjected to illegal and inhuman treatment and that the Punjab Government have suppressed petitions from them to the Government of India. I can assure the Hon. Member and the House that there is no truth in these suggestions. The Government of India are kept fully informed of the condition of the detention in the Lahore Fort and the manner in which persons detained there are treated. I should like to repudiate once and for all and in the strongest terms the allegation that this treatment involves torture of any kind, physical or mental, neither the Government of India nor the Government of the Punjab would tolerate such practices for a moment,

nor incidentally would they be of any use. The health of the prisoners is well looked after, their accommodation is suitable, and their complaints if any receive due consideration.

If this is not considered sufficient, H.M. might add that detail information had been called for and a further reply would be laid on the table of the House in due course.

The two last question due for answer on 17th might be answered in the same way. It might be worth while asking the Punjab Government of the whole of the question not sent to them, whether they would allow Sant Singh or any other M.L.A. to inspect conditions in the Fort, though not of course to interview any prisoner detained there. If this could be done and the offer could be announced, it would have a good effect.

It will be noted that these question all relate to rather ancient history. We may expect similar allegations about the treatment of Jai Prakash Narayan and Ramanandan Mishra (whose cases has also been before the Lahore High Court) and it seems to me that some clear pronouncement on the main point at issue is called for.

R. Tottenham
2.2.44.

- 1 'N G O' referred to highly confidential files that were not to go out of the department and entered on the register - Ed
- 2 Not printed

154: Government of India to the Government of Punjab

File No. 44/2/43 - Home Poll (I)
[NAI]

Secret.

D.O. No. 44/2/43 - Poll (I).

Government of India,
Home Department.

New Delhi, the 2nd February 1944.

My dear Bourne,

Will you please refer to your express letter No. 663 BDSB dated 28th January, regarding interrogation in police custody.¹ I think there has been some misunderstanding. It was not our intention to impose any 'arbitrary time limit' on the duration of police custody for interrogation and I am sorry if our letter of January 17th² gave that impression. Nor did we intend that it should become generally known, either to the prisoners themselves or to the public, that a special order would be required in the event of the period of police custody being extended beyond two months. What we are concerned to ensure, for our own satisfaction in respect of our own prisoners, is that any extension of police custody beyond two months

is only ordered after full consideration – in fact precisely the practice that you have prescribed for your prisoners as stated in the third paragraph of your letter. We shall naturally do our best to accept any recommendations as to the duration of police custody required, but since it is we who have to answer questions on this subject in the Legislature, we do need -

- (a) To prescribe some sort of a general standard for the duration of police custody;
- (b) To be kept informed if the normal period is to be exceeded; and
- (c) To have some idea of the reasons for extensions.

2. We trust that you will agree, that there is really no great difference between the procedure proposed by us and that already practised by you, and that you will have no objection to adopting this procedure in the case of any Central Government prisoners whom you may interrogate in future.

Yours sincerely,

(R. Tottenham)

F.C. Bourne, Esq., CSI, CIE, ICS,
Chief Secretary to the Government
of the Punjab, *Lahore*.
N.3/2.

1 Doc. 151.

2 Not printed.

155: Official Notings – Treatment of detenus (continuation of Doc. 153) (dt 2.2.1944–3.2.1944) (extracts)

File No. 22/18/44 – Home Poll (I)

[NAI]

The only point in this question which needs real consideration is part (d),¹ since we know that petitions addressed to the Central Government have on occasions been withheld by the Punjab Government without apparently informing us (cf. the case of Sardul Singh Caveeshar). The Punjab Security Prisoners Rules, a copy of which is placed at flag 'U',² are not of much help to us. Paragraphs 27 and 31 are the relevant paragraphs, from which it is clear that D.I.G., C.I.D., Punjab has discretion to withhold and destroy any communication including one addressed to the Central Government. We should, I think, write to the Punjab asking specifically that any Central Government security prisoner's communication to the Government of India be forwarded without delay, and I have drafted the reply to part (d) on this assumption.

S.J.L. Olver
2.2.44

D.S/(I) also the draft answer to (a) needs further consideration.

The second sentence of the draft letter evades the point which is not about the rule framed by Government, Central or Provincial, but about their breach in particular cases. I don't know that H.M. should commit himself to non-interference in complaints of ill treatment of Central Government's detenus. I have attempted some modification.

As regards the withholding of petitions to the Government of India I agree with U.S. It is unwise to have the discretion to withhold so completely in the hands of the D.I.G., C.I.D. – surely Government may be trusted not to interfere unreasonably.

V. Sahay.
3.2.44.

The draft¹ may be typed as amended. I agree with a above.

1. Not printed – official note regarding representations from the Security Prisoners not forwarded to the Central Government.
2. Not printed.
3. Not printed

156: Government of India to Government of Bengal¹ (extracts)

File No. 3/2/44 – Home Poll (I)
[NAI]

Dated 3/2/1944.

S.No. 8

Olver to Chief Secretary, Bengal.

... We observe that the Calcutta edition of the '*Hindustan Standard*' dated January 27th carried a full version of the Congress pledge on its front page. We should be glad to know urgently what action you propose to take against this paper.

SJ.L. Olver

¹ See also Docs 147 and 148.



157: Additional Secretary and Press Advisor, Government of Bengal to Government of India

File No. 3/2/44 – Home Poll (I)

[NAI]

S.No. 10

From

H. Tufnell Barrett, Additional Secretary & Prov. Press Adviser

To the Government of Bengal.

To

U.S. to G.O.I. Home.

Dated 5.2.44.

Reference your express letter No. 3/2/44 – Poll (I) dated the 28th January, 1944.¹ In accordance with the directions contained in your letter, dated the 20th January 1944,² the local press was warned not to publish Independence Day pledges or variations of them in a 'prominent way'. No ban was placed on the publication, and since the *Amrita Bazar Patrika* published the pledge omitting the more seditious portions and without giving it undue prominence and since reproductions of the Congress Flag have not been forbidden, Provincial Government do not consider that any action against the paper is called for.

1. Doc. 150.

2. Not printed – See Doc. 148.

158: Official Comments of the Defence Department on Patna High Court judgement releasing some detenus – (dt 7.2.1944)

File No. 25/11/44 – Home Poll (I)

[NAI]

Copy of the Patna judgment releasing nine detenus on *habeas corpus* applications has arrived.¹ Home Department who have been enquiring for this reference may just see and pass the file on to legislative Department.

In these judgments, the High Court, acting under section 491, Criminal Procedure Code directed the release of nine persons detained under rule 26 (1) (b), as follows:

(i) Singheshwar Prasad, Rajeshwari Prasad Singh and Hariram Gurgutia. Pages 19 to 21 of Mr Justice Shearer's judgment and pages 4 to 5 of Mr Justice Varma's judgment refer. These men had all been arrested originally under rule 129 and a considerable time after the expiry

of two months from their arrest, orders of detention under rule 26 were made. The men had apparently been kept in custody throughout the period from their arrest to the making of the order of detention. The learned judges observing that the executive had not complied with its obligations under rule 129, took the view (Mr Justice Shearer does not explicitly say so, but Mr Justice Varma does) that the orders had been passed to give previous detention a semblance of legality, and were not therefore *bona fide*.

(2) Tarkeshwar Prasad. Pages 9 to 10 of Mr Justice Shearer's judgment, and pages 3 to 4 of Mr Justice Varma's judgment refer. In this case, the order of detention was not signed by an authorized officer, and the Court therefore held the order was invalid.

(3) Nageshwar Prasad Singh, Jogendra Prasad Sinha, Jagdish Prasad Santalia, Kumar Jha and Jogeshwar Singh. Pages 21 to 25 Varma's Mr Justice Shearer's judgment, and pages 6 to 7 of Mr Justice Varma's judgment, refer. All these persons were apparently under-trial prisoners at the time the order of detention was made. For the reasons expressed most forcibly on page 25 of Mr Justice Shearer's judgment, the Court came to the conclusion that the Governor could not have been reasonably satisfied that the orders of detention were necessary, as each of the persons concerned was already detained under a valid warrant.

2. It does not appear whether a certificate under section 205 of the Constitution Act was asked for or given. Nor have the Government of Bihar indicated whether they wish to appeal, or what their view of the judgment is.

3. It seems to me somewhat daring of the court to have asserted that, although they did not know and could not enquire into the reasons for which the Governor might have made an order, they could nevertheless reach the conclusion that he had no reasonable grounds for making one. This seems to be the main point of principle involved in the case, and its consideration by the Federal Court might be desirable. On the other hand, it is difficult not to feel that there has been an abuse of procedure in Bihar.

4. Whether there is any question of an appeal or not, it would be desirable to find out what Bihar have to say, how they would justify the procedure stated in the judgment to have been followed and what rectifications if any they would propose to make in future.

5. Home and Legislative Departments should see for comments.

L.J.D. Wakely
7.2.44.

Home Department (Sir Richard Tottenham).
Legislative Department (Sir George Spence).
D.D. U.O. No. 1224-DC/44, dated 8.2.44.



159: Extracts from Fortnightly Report from C.P. & Berar for the first half of February 1944

File No. 18/2/44 – Home Poll (I)
[NAI]

Political interest during the fortnight was centred mainly in the proceedings of the Central Legislature. The Press devoted considerable space to the issues arising out of the restriction order served on Mrs Sarojini Naidu, her defence of the congress, and the debates in the Assembly on adjournment motions relating to the 'Misapplication in the provinces of the Defence of India Rules.' It was argued that the speeches of elected members demonstrated the universal feeling which prevail amongst all political parties about Government's attitude to the Congress and the use of Defence of India Rules to suppress lawful activities and override the civil liberties of the people. Mrs Naidu's statements were regarded as completely absolving the Congress working Committee of Government's charges against it, and demands were again raised for the release of Congress leaders, and the initiation of negotiations for ending the 'political deadlock'. A good deal of this agitation was, however, artificial and laboured and evolved little public interest or enthusiasm. The Press is more actively interested in the practical business of securing the release of more Congress detenus, and at the moment, a strong press campaign is in progress for the release, on medical grounds, of Pandit Ravi Shankar Shukla,* the ex-Congress Prime Minister of the province, and one or two other prominent Congressmen.

160: Extracts from Fortnightly Report from Orissa for the first half of February 1944

File No. 18/2/44 – Home Poll (I)
[NAI]

All India Topics. The resolution passed in the Central Legislative Assembly condemning Government for the alleged misuse of the Defence of India Act and the rules framed thereunder and that relating to restrictions on Mrs Sarojini Naidu were the subject-matter of a leading article in the *Samaj*, which quoted the recent remark of the Chief Justice of the Allahabad High Court that the Defence of India Act and Rules had paralysed the High Courts.

* Doc. 109.



161: Official Notings (continuation of Doc. 155) (dt 7.2.1944-10.2.1944) (extract)

File No. 22/18/44 - Home Poll (I)

[NAI]

... The draft reply has been typed. A draft express letter¹ to the Punjab is also put up for approval. (It is however for consideration whether a copy of the draft should also be endorsed to the other Provl. Government's and CCS).

2. As regards representations from persons detained in the Punjab, attention is also invited to rule 41 of the Punjab Security Prisoners Rules from which it appears that all representations which are properly worded shall be forwarded to the Provl. Government by the Supdt. of Jail concerned.

7/2/

(Action to address Punjab & any other Provincial Government concerned should be taken on the relevant file and the draft should be removed and put up properly on that file).

Draft reply in for approval.²

(S.J.L. Olver)
R. Tottenham.

7/2/

V. Sahay

7/2/

Additional Secretary.

Clause (b) is not clear. What is meant by 'such' a long period? Has the original question been amended? In clause (c) the Words 'in this manner' are also not clear. The draft reply to this clause seems to assume a particular meaning which possibly depends on the part cut out of the original question. It seems that (c) either does not arise or can be included in the reply to (a)

Clause (d). Are all the cases cited of central prisoners and do we know that petitions have not been withheld. And if we know of such action in the case of the prisoner are not entitled to say that the G.O.I. have no reason to believe that any petition have been withheld?

R.M. Maxwell
9.2.44

Additional Secretary.

Discussed; H.M. has approved as amended.

R. Tottenham.
10/2

162: Official Notings regarding petitions of security prisoners (dt 7.2.1944–3.3.1944) (extracts)

File No. 44/37/43 – Home Poll (I)
[NAI]

As ordered on the file dealing with Sardar Sant Singh's question in the Assembly regarding the treatment of Central security prisoners in the Punjab and withholding of their representations to the Central Government, a draft express letter¹ to the Punjab is put up for approval.

2. A copy may perhaps be endorsed to other Provincial Government for information. It is not necessary to send copies to C.C.'s as the point is already covered by a para in our latest Central S.P.'s order.

A.S.
7.2.44

In a reply approved for answer to a question in the Assembly tomorrow, H.M. has stated that the Punjab Government has been addressed on this subject. We must, therefore, get a letter off to them today and I put up a draft D.O.²

2. I will take up after issue the question of addressing other Provincial Governments on this subject.

(S.J.L. Olver)
10.2.44.

D.S.(I)

All petitions had better come to the Home Department first and I have revised slightly to ensure that.

V. Sahay
10.2.44.

Additional Secretary.

Surely the questions were by Sant Singh -- not Mangal Singh. Verify: Otherwise I agree -- issue.

R. Tottenham
10.2.44.

Serial No. 60 (Issued)³

As desired by U.S. (I) the Security Prisoners Rules of the various provinces have been examined and relevant portions have been sidlined in red pencil. Whereas Bombay, Bengal, Punjab, Assam, Orissa and Sind have laid down that only such petitions as contain objectionable and insulting language may be withheld, Madras, U.P., Bihar and C.P. have provided for the forwarding of all petitions with remarks if any to the Government i.e. the

Provincial Government. The Bombay, Bengal, Assam, Orissa and Sind Rules provide for withholding and/or destruction, the security prisoners concerned to be informed when a representation is so treated. The Punjab provide only for withholding and not destruction, and there is no stipulation that the security prisoner should be informed of his petition having been withheld. The N.W.F.P. rules are silent on this point though there is a provision for the forwarding of telegrams. No separate rules have been laid down by any province dealing with the petitions of Central Government Security Prisoners addressed to the Central Government and the rules as they stand do not render it obligatory for the Provincial Governments to forward all such petitions or to inform the Central Government of the fact of withholding. (The rules do in some cases provide that the Provincial Government shall be the intermediary between the Central Government and the security prisoner).

2. There are no Central Government security prisoners detained under Ordinance III in Assam, N.W.F.P. or Orissa and if we address Provincial Governments in the sense of our letter to the Punjab, we should perhaps only endorse copies of the letter to these three provinces.

BKA

2.3.41

A.S.

2.3.44 (U.S.) (I)

We have not had any trouble regarding the forwarding of petitions addressed to us by Central Government security prisoners detained in other Provinces. I think, however, that we may as well make the position clear and I put up a draft. We might, I think, take the opportunity of suggesting that other Provinces should follow the action taken in the Punjab to make automatic the forwarding of petitions addressed to the High Court, if this has not already been done, and I have added a paragraph on this subject. The letter may, I think, be addressed to all Provinces except the Punjab.

(S.J.L. Olver)

3.3.44.

V. Sahay,

3.3.44

1, 2 and 3 Not printed (Draft letters).



163: Government of Punjab to the Government of India (replies to the questions to be put up in the CLA)

File No. 22/18/44 – Home Poll (I)
[NAI]

Secret

From
F.C. Bourne, Esquire, CSI, CIE, ICS,
Chief Secretary to Government, Punjab.

To
The Under Secretary to the Government of India,
Home Department, New Delhi.

No. 1163-BDSB

Dated Lahore, the 8th February, 1944.

Sir,

I am directed to refer to your express letter No. 22/18/44 – Poll (I), dated the 3rd February, 1944,¹ and to enclose answers to the five questions to be asked by Sardar Sant Singh, M.L.A., in the current session of the Legislative Assembly.

I have the honour to be,
Sir,
Your most obedient servant,
Chief Secretary to Government

HKN.

Enclosure

100 Starred D.No. 18.

- (a) Yes; he (Sardar Sardul Singh) was allowed the use of an electric fan and home food which are not sanctioned in the Punjab Security Prisoners' Rules.
- (b) Yes; Sardul Singh Caveeshar admitted that he was given facilities, such as the use of an electric fan and home food which he thought were admissible to him under the rules. These facilities were later withdrawn.
- (c) No.
- (d) Sardul Singh Caveeshar, Shankar Lal of Delhi and Mr Dwijen Bose were kept in the Lahore fort for interrogation under the orders of the Punjab Government at the instance of the Government of India. They were not maltreated. Mr Arvind Bose has never been detained in the Lahore fort.
- (e) Sardul Singh Caveeshar and Mr Dwijen Bose submitted representations about their

alleged maltreatment in the Lahore fort, but as the allegations were baseless no action was taken by the Punjab Government.

101 Starred D.No. 19.

- (a) Yes.
- (b) No.
- (c) Yes; interviews with legal advisers were not permissible under the rules in force at that time.
- (d) A copy of the detention orders was not supplied to Sardul Singh Caveeshar but he was informed that he could see the detention warrant if he wished to.

103 Starred D.No. 21.

- (a) Apart from Sardul Singh Caveeshar, Mr Dwijen Bose made representations.
- (b) No representation was received from L. Shankar Lal of Delhi. It has already been stated that a representation was made by Mr Dwijen Bose of Calcutta. No action was taken on his representation by the Punjab Government, as his allegations were baseless.
- (c) It is not clear to which years this question relates. If further details are given it will be possible to answer the question.
- (d) &
- (e) It is not in the Public interest to allow this at present.

Starred D. No. 5.

- (a) The Punjab Government did not forward the petition of Sardul Singh Caveeshar but the facts were reported to the Government of India.
- (b) The treatment of detained persons is governed by the Security Prisoners' Rules.
- (c) Government do not propose to take any action because the allegations of Sardul Singh Caveeshar are without foundation.
- (d) Yes.

Starred D.No. 6.

- (a) A copy of the detention orders was not supplied to Sardul Singh Caveeshar but he was informed that he could see the detention warrant if he wished to.
- (b) No
- (c) No.
- (d) The conversation was confined to matters connected with Sardul Singh's interrogation.
- (e) No; Pt. Ram Rup Sharma was detained because of his own subversive activities.

1 Not printed — See Docs 153 and 155 in this connection.



164: Official Notings on the letter received from Punjab (dt 9.2.1944–10.2.1944) (extracts)

File No. 22/18/44 – Home Poll (I)
[NAI]

S. No. 3 (Receipt)¹

The Punjab reply has just come in and has been added to the file. The answers are on the whole fairly good, I think, and it seems definitely preferable to answer the questions in detail with the material provided than to give a general answer of the nature suggested by Additional Secretary, which would leave a number of points in the air. I have placed draft replies² on the file based on the replies given by the Punjab though with some amendments and additions. It is for consideration whether we should not at some suitable place – perhaps in the answer to question No. 103³ – emphatically deny the imputation that prisoners in the Lahore Fort are maltreated.

2. I would invite attention to the following points in the replies themselves:

- (1) Part (d) of the reply to question No. 100¹ says that the prisoners concerned were detained in the Fort for interrogation at the instance of the Government of India. I do not think this is strictly correct. So far as I know, no request of this nature was made by the Home Department, though doubtless the arrangements were made at the instance of the Intelligence Bureau. However, this may stand I think.
- (2) In the reply to (c) of question No. 100 and (b) to question No. 103, the Punjab admit by implication that representations to the Government of India were withheld. In their proposed reply to question No. 5 for 17.2.44, they admit this openly. I rather doubt the advisability of doing this and have attempted a re-draft of this reply on general lines which is I think justified and which should avoid further inquisition into the question of how and when this petition was reported to us.
- (3) In their reply to (a) of question No. 6 for 17.2.44,⁵ the Punjab have hedged over the first part of the question whether Caveeshar made any reference to the Home Member asking to be supplied with a copy of the order. It is to be inferred that he did and that it was withheld. I have revised the reply, to part (a), since the reply proposed by the Punjab will, I think, invite awkward supplementaries.

2. I have linked below our file No. IV/3/43–M.S. regarding Sardul Singh Caveeshar. Apart from the papers on this file, office appears to have received no petitions or references to petitions from Sardul Singh Caveeshar from the Punjab Government. The only petition on the linked file is that at Serial No. 1 addressed to Justice Sir Mohd. Munir, while in serial No. 12, reference is made to a petition to H.E. the Viceroy, but none to any petition addressed to H.M. We are separately addressing the Punjab Government on this subject of the withholding of petitions addressed to the Central Government.

(S.J.L. Olver)
9.2.44

D.S. (I)

I think it would be better to avoid detailed answers. There are two weaknesses which that course would expose, one detention of petitions (we have still not been told the reason) and second the non-supply of the detention orders to Caveeshar.

V. Sahay
9.2.44.

Additional Secretary.

I myself rather agree with D.S. and invite attention to my note of February 2nd.⁵ If however H.M. prefers to give this detailed answers suggested by the Punjab Government. – I have suggested certain amendments.

Q.No. 102^b in the list for 11th has been submitted to the H.M. separately.

The last two QS have not yet been received within admitted form.

R. Tottenham
9/2/44

H.M.

These replies, as amended by me in blue pencil will I think be sufficient. There are only two points with which Additional Secretary may deal without further reference to me. (1) On No. 5 (page 8), should not put up 102 also be referred to forward all petitions to us.

(2) Reply to part (e) of qn. No. 6 (p. 10) if Sharma was detained by order of the Provincial Government. I am not sure that we ought to reply. The Punjab Government have not given us any details of the 'subversive activities' for which he was detained. We do however know from them that the reason is not as stated in the question. We might perhaps say 'Pandit R.R. Sharma was not detained by order of the Government of India. I understand however that his detention had no connection with S.S. Caveeshar's case.

R.M. Maxwell
Additional Secretary

A.D.B.
11 2.44

The reply to join (c) of No. 128 might now correctly be: 'Yes: under an order of the Punjab Government'?

2. I am having brief history dossier on Caveeshar, Shanker Lal, Dwijendra & Arabindo Bose prepared for this.

12/2.

- | | |
|----------------|--------------|
| 1, 3, 4 and 6. | Doc. 163. |
| 2. | Not printed. |
| 5. | Doc. 153 |



165: Government of India to the Government of Punjab (petitions of security prisoners)

File No. 44/37/43 – Home Poll (I)

[NAI]

No. 44/37/43

Dated 10th February 1944

To
F.C. Bourne, Esq., CSI, CIE, ICS,
Chief Secretary to the Government
of the Punjab, Lahore.

My dear Bourne,

You will have noticed from the questions by Sardar Sant Singh regarding the treatment of Sardul Singh Caveeshar and other Central Government prisoners detained in the Lahore Fort, sent to you for material for reply under our letter No. 22/18/44 dated 3.2.44.¹ that one of the points with which great play is made is the withholding of petitions addressed by Sardul Singh and other prisoners to the Home Member and the Central Government. It appears from your draft replies² that such petitions from Sardul Singh and Dwijin /Sic/ Bose were in fact withheld by the Punjab Government since the allegations of ill-treatment that they contained were baseless; we do not appear have been informed of it at the time.

2. We see from clause 41 of the Punjab Security Prisoners Rules that applications or representations from security prisoners to Government are to be forwarded to Government unless couched in disrespectful or discourteous language. We think that in future all applications and representations from Central Government security prisoners detained in the Punjab should, unless withheld under clause 41 (2) of your Rules, be forwarded without delay to the Home Department of India with such comments on their contents as you may think necessary or appropriate. Even in cases of communications withheld clause 41 (2), we should be glad to be informed of the fact at the time.

Yours sincerely,

R. Tottenham

Additional Secretary.

1. Not printed.

2. Doc 163.



166: Official Notings (12.2.44-4.3.44)

File No. 39/16/44 - Home Poll (I)

[NAI]

General Staff Branch
(M.I. Directorate)

12.2.44

Subject: *Detention* certain Personnel of 1/15 Punjab Regt Order Ordinance III of 1944.

1. It is requested that the Government of India in the Home Department be asked to issue Detention Orders in respect of the undernoted personnel of 1/15 Punjab Regt who are now in military custody in Madras pending discharge:

1. Subedar KERTAR SINGH, Sikh, s/o ACHILAR SINGH of Hoshiarpur Dist.
2. No. 9979 Have. UJAGAR SINGH, Sikh, s/o SUCHIT SINGH of Lyallpur Dist.
3. No. 10116 L/NK PIARA SINGH, Sikh s/o HARNAM SINGH of Lahore Dist.
4. No. 11164 Sep. NAZAR SINGH, Sikh s/o SANTA SINGH of Hoshiarpur.

2. The G.O.C. in C., Southern Army has expressed the opinion that the detention of these men is desirable in order to prevent them from acting in a manner prejudicial to the War effort. He considers that, having regard to the mens' behaviour in their unit, they are likely, unless restrained, to indulge in anti-recruiting and anti-Government propaganda. I agree with this opinion and consider that their detention under Ordinance III of 1944 is justified. Their history and contacts justify the conclusion that they are likely to indulge in subversive activities.

3. It was from this Battalion, the 1/15 Punjab Regt, that a platoon of 24 Sikhs deserted to the enemy on the Arakan Front in February 1943. Investigations showed that subversive and disgruntled elements existed within the unit, that there had been contact between one of the deserters and SUBHAS CHANDRA BOSE in Calcutta in 1939 and that at that time several men of the battalion were interested in subversive politics, that certain men of the unit had contact with Congress propagandists in Chittagong at the end of 1942, and that the tone and spirit of the Regimental Centre at Ambala, to which several men of the battalion had returned, was bad. The Battalion moved to Madras in July 1943, and in October the Officer commanding reported that the Sikhs had 'retired within themselves to an extent unusual for Sikhs.' Investigations following the attempted murder of a Sikh Havildar led to disclosure of evidence of anti-British, pro-Japanese and pro-Congress sentiments among men of the unit, Sikhs and Jats. It was unfortunately impossible to secure sufficient evidence on which to bring anyone to trial for the attempted murder but strong enough grounds were shown for the discharges from the Army of fifteen men, in respect of four of whom detention order are now requested.

4. A statement of the case against each of the four men is attached hereto, marked 'A', 'B', 'C', and 'D'. [Not printed - Ed.]

5. It is requested that, should detention be decided on, the Civil Authorities in Madras

be asked to make the necessary arrangements with the local Army Authorities, to serve the detention orders on the men concerned as soon as they are formally discharged from the Army, and to arrange for their detention in such a place as the Home Department may consider suitable.

6. The decision concerning the disposal of the four men may please be communicated to me in due course.

Major General Cawthorn
Director of Military Intelligence.
12 February 1944.

War Department.

'Thro' A.G's Branch (DAG II)

Copy to Director, I.B., Home Department for information, ref our u/o No. 5641/IV/GSI (b) of 28 December '43.

War Department

This case has been seen by A.D. S.I. who mentioned it to Secretary.

War Department would be grateful if the Home Department would kindly take necessary action as suggested by Gen. Cawthorn against the four people mentioned in the preceding note,

Home Department (Mr Olver).

The P.U.C. is for orders. If detention orders are to be issued, the case will have to be submitted to H.M. for orders.

2. The case against Hav. Ujagar Singh is clear and there can be no doubt, I think, that he is a fit subject for detention. The cases against L/NK' Piara Singh and Sep. Nazar Singh are less clear, but still, I think, sufficient to satisfy us that detention is necessary. The case against Achhar Singh seems to rest entirely on Paras 4 and 5 of the statement² against him, it is in my opinion weak and insufficient; and I think we should ask for a more precise and detailed statement of the case against him before agreeing to issue orders.

25.2.44.
(S.J.L. Olver).

D.S./ (I).

Except against Ujagar Singh, who I agree should be detained, the material does not indicate that a less severe form of preventive action eg. restriction to the village will not suffice. That would enable them to be watched, and if they spread disaffection, doubtless detention could be speedily and certainly arranged.

V. Sahay
2C/2

Additional Secretary.

The opinion formed of these four men is no doubt the result of the impression they created under examination on interrogation; and even if the 'material' against them may not in all

cases seem very convincing. We cannot lightly reject the advice of the responsible military authorities. I note that a copy of D.M.I.'s memo of February 12th was sent to D.I.B. and I think his views should be invited. If they are to be detained I suppose they can go to Indore.

R. Tottenham.
28/2

This may go on to D.I.B. As regards the last point, I do not know how much room there still is at Indore but we could doubtless make room there by transferring some of the Bengal & Assam detenus who are there to Lucknow camp Jail.

V. Sahay.
26/2

D.I.B

H.D. u/o 1292/44 - Poll (I) dated 28.2.44.

Notes in the Intelligence Bureau.

On the cases put forward the action suggested is on the drastic side but extreme measures are necessary in the case of the 1st/15th Punjab Regiment which has occasioned grave anxiety for some considerable time and must be cleaned up thoroughly if it is to be of further use as a fighting unit. This cleaning up process involves not ridding the Regiment of those who are the cause of its unsatisfactory state, but also bringing home to all concerned that those in authority intend to stand no nonsense. In these days it may be a disgrace to a Punjab cultivator to be dismissed from the Army, but it is not a vast punishment when land is paying so well. This is some argument in favour of the action suggested. Others are as stated in D.M.I.'s note and a further one is that it would be as well to deprive the country of the presence at liberty of what is essentially potential enemy agent material and also to prevent the return of such persons to the central (and almost always dangerous) Punjab districts. Taking all the circumstances into consideration the Bureau, therefore, supports the recommendation for action which D.M.I. has made.

2 There is no objection to put forward to Indore being the place of detention.

Signed
4/3/44.

Home Department (Mr Olver)

D.I.B. u/o No. Sa/516-IV dated 14.3.44.

I was not objecting to dismissal or to bringing home to all concerned that those in authority intended to stand no nonsense. We are merely concerned with whether detention should be ordered.

As regards the place of detention, we should send them to Indore, I think that the better course would be to send them to a Punjab Jail - the usual course with persons suspected of being in with the enemy is to send them to the jail of the province of origin.

V. Sahay.
15/3

Additional Secretary.

There would I think be a case for asking the War Department to deal with this case. They can of course issue orders under Ordinance III. It has however been generally agreed that Home Department should operate Ordinance III & War Department Ordinance IV.⁴ I think the grounds for this action proposed are sufficient.

R. Tottenham.
15/3.

I have no copy of Ordinance IV. Is it Additional Secretary's proposal that action should be taken under that Ordinance and not under Ordinance III?

Maxwell.
10/3

Additional Secretary.

Action cannot be taken under Ordinance IV which only applies to people who have entered India from occupied territory after a particular date. What I meant was that this was largely a military case and therefore W.D.⁴ could themselves take action under Ordinance III. I thought however that it would be better for H.D.⁵ to do so.

R. Tottenham.
16/3

I agree to detention under Ordinance III.

R.M. Maxwell

1. I/NK – Lance Naik.

2. Not printed.

3. This was the Military safety (Powers of Detention) Ordinance, 1944. It is mentioned in the last paragraph of Doc. 144 above, and also in fn.5 of the introduction to this volume

4. W.D. War Department.

5. H.D. Home Department.

167: Official Notings reg. Independence Day pledge read at a meeting of the Calcutta Corporation (15.2.44–20.4.44)

Government of Bengal (Home) File No. 6/44
[Bengal State Archives]

(2) It appears from the report in the *A.B. Patrika* of 27.1.44 below¹ that the Independence Pledge was read in a meeting of the Calcutta corporation for the first time. Attention is solicited to para 3 (d) of the circular memo No. 59 P.S. of 20.1.44. The P.H. & L.S.G. Department may be asked to obtain a copy of the proceedings of the meeting, together with copy of the

pledge actually read before action taken in the matter. That Department may also be requested to state whether they have any papers about the recitation of the Independence pledge in a meeting of Calcutta Corporation in any previous year.

L. Dias
15.2.44.

Extract copy of Home Department's above note has been taken, and enquiry will be made as requested and a note of results will be forwarded to Home Department as early as possible.

E.W. Holland
19.2.44

This may find receipt of report of the P.H. & L.S.G. Department for a fortnight.

L. Dias
19.2.44.

Notes from the middle of pre-page will recall. The P.H. & L.S.G. Department may be requested to let us see the papers referred to, if they available by now.

K.P. Bose
6.3.44.

Notes prepage. This Department file M 1C 3844 containing the relevant proceedings of the Corporation meeting may be shown to the Home (Poll) Department. No previous papers on the subject are traceable. It appears from the newspaper report that the pledge was read for the first time at the Corporation meeting held on 26.1.44.

A K. Sen.
14.3.44.

The proof copy of the Corporation proceedings below may be seen, and also the GOI, Home Department letter dated 7.2.44.

2. The Independence pledge has been read in the Corporation for the first time.

3 The point seems to be whether by reading the Independence pledge and by moving the adjournment motion on account of Independence Day, the mover and the Seconder have violated their oath of allegiance and whether they can be proceeded against under the Calcutta Municipal Act or any other law.

4. The L.R's opinion may be taken.

K.P. Bose
20.4.44.

1 See Docs 147 and 148.



168: Baldev Mitter Bijli and others (petitioners) v. Emperor [Harries C.J., Blacker and Munir J.J. Full Bench (16 Feb. 1944)]

AIR, Vol. 31, 1944, Lahore, p. 142

Criminal Misc. Petitioners Nos 796, 797 of 1943, Decided on 16th February 1944, referred by Munir J., D 16th December 1943.

Veda Vyasa and S.M. Sikri — for petitioners.
R.C. Soni for Advocate General — for the Crown.

Harries C.J. — These are three petitions under S.491, Cr. P.C., preferred by persons detained under the Defence of India Rules. Criminal Miscellaneous No. 796 of 1943 is the petition of Baldev Mitter Bijli of District Hoshiarpur, who was arrested at Lahore on 21st August 1942 under R.129, Defence of India Rules, and was subsequently detained under an order made under R.26 of those rules.

[Omitted: Summary of points made by the petitioner — Ed.]

Criminal Miscellaneous No. 797 of 1943 is the petition preferred by Feroze Chand of Lahore who was arrested on 14th August 1942 at Lahore and subsequently detained in Jail under an order made under R.26, Defence of India Rules.

[Omitted: Summary of points made by the petitioner — Ed.]

Both these detenus have also filed affidavits in support of their petitions and in these affidavits the detenus complain that there could have been no justification for their arrest and detention. They also complain that they have not been treated in the jail in a proper manner. In their affidavits both also complain that they delivered *habeas corpus* petitions to the Superintendent of the Jail concerned on 18th and 19th June 1943, and that these petitions had been retained by Government until the month of October 1943, when they were forwarded to this Court.

Mr F.C. Bourne, Chief Secretary to Government, Punjab, has filed affidavits in reply to the affidavits of these two petitioners in which he deals with the various complaints of the detenus as to their treatment. Mr Bourne admits that the *habeas corpus* applications of these two detenus were withheld from this Court by the Government until the month of October 1943. In reply to the allegation in the affidavit of Baldev Mitter Bijli, Mr Bourne, says that at the time the *habeas corpus* petition was forwarded by the Jail authorities to Government, the latter were advised that under S.17, Defence of India Act, the detention of security prisoners could not be questioned in a Court. Subsequently he says that the Government realized that the law was not as they had imagined but as this Court had already referred another *habeas corpus* petition for decision by a bench in October, this petition together with others was held up until the decision of that case. Mr Bourne says that it was expected that in view of some judgment of the Federal Court¹ and judgments of the Calcutta High Court² and this Court, there would be a large number of *habeas corpus* applications and that there was no point in forwarding single applications as they came in and that it would be more convenient to forward a number together. In answer to the allegation made by Feroze Chand, Mr Bourne says that his application

was withheld from this Court by Government until this Court had delivered judgment in a similar application which had been referred to a Division Bench in the month of October 1943

The third petition is by L. Thakar Das Kapur on behalf of his wife, Smt. Puran Devi who was arrested on 9th August 1943 at Lahore and subsequently detained in Jail under R.26, Defence of India Rules. It is alleged that at the time of her arrest Smt Puran Devi was not engaged in any unlawful activity and that her detention is illegal and improper. It is further stated that the detainee was ill and that her continued detention in prison would very seriously affect her health.

[*Omitted*: Text of the orders of detention – Ed.]

It is contended on behalf of the three petitioners that these orders are illegal and afford no justification for the detention of the petitioners. On the other hand, Mr R.C. Soni has taken a preliminary objection that this Court has now no jurisdiction to consider these petitions and he relies upon a very recent Ordinance, Ordinance No. 3 of 1944,⁴ which was promulgated by His Excellency the Governor-General, on 15th January 1944.

[*Omitted*: A brief summary of section 3, 5, 6 and 10 of the Ordinance No. III of 1944 – Ed.]

Mr R.C. Soni has contended that by reason of Ss.6 and 10 of Ordinance No. 3 of 1944 this Court has no longer jurisdiction to hear these applications though they were pending before the Court when the Ordinance was promulgated. He has contended that by reason of s.10, sub-s.(2) of the Ordinance the proceedings pending before this Court were discharged the moment this Ordinance came into force.

To take away the powers of the Ordinary criminal and civil Courts of the land the plainest terms are necessary. There can be no doubt, however, that the Ordinance clearly purports to deprive this Court of jurisdiction in cases of detention under the Defence of India Rules. Sub section (1) of S.10 in terms state that no order made under the Ordinance shall be called in question in any Court and that no Court can make an order under S. 491, Criminal P.C., in respect of any person detained under the Ordinance, and further by sub-section (2) all such proceedings under S.491 as were pending when the Ordinance came into force are discharged. In other words, the jurisdiction of this Court is taken away even in the case of pending proceedings.

Mr S.M. Sikri, who argued this case for the detenus very ably and forcibly, has conceded that if this Ordinance is valid, then this Court has no longer jurisdiction to consider the petitions. He, however, urged that the Ordinance cannot apply to the petitions now under consideration and I shall deal with his contentions *seriatim*.

[*Omitted*: Detailed rebuttal of Mr Sikri's arguments, with reference to the clauses and sections of Ordinance III of 1944 and beginning with an account of the Ordinance making efforts of the Government of India ever since Federal Court declared Rule 26 of D.I.R. *ultra vires*. (Keshav Talpade vs. Emperor) – Ed.]⁴

For the reasons which I have given, I am satisfied that the orders of detention in this case could only be questioned on one ground and one ground only, merely, that they are issued under R.26, Defence of India Rules, which was declared *ultra vires*. That objection however cannot affect the validity of the rules by reason of S.6, sub-section (1) of the new Ordinance, Ordinance 3 of 1944. These orders therefore come within sub-section (2) of S.6, and must be deemed to have been made and shall have effect as if they had been made under the new

Ordinance and as if the ordinance had been in force at the time when they were made. That being so, sub-section (2) of S.10 of the new Ordinance applies, and all proceedings in this Court, though pending before the Ordinance came into force, are discharged.

[*Omitted: Rebuttal of Sikri's argument that sub-section (2) of section 10 of Ordinance III was ultra vires — Ed.*]

For the reasons which I have given I am satisfied that the preliminary objection taken on behalf of the Crown that this Court has no jurisdiction to hear and determine these petitions is well founded and that being so, they must be dismissed.

Before concluding this judgment, I feel it my duty to refer to a matter raised by Baldev Mitter Bijli and Feroze Chand. These two detenus forwarded petitions in the nature of habeas corpus petitions to this Court through the Superintendent of the Sialkot jail in June 1943. These petitions did not reach this Court until October 1943 and Mr Bourne, the Chief Secretary to Government, admits that they were retained by the Provincial Government for about four months. Mr Bourne in his affidavit has explained why these petitions were retained by the Government. He says that at one time it was thought that such petitions did not lie to this Court and later when it was realized that they did the Government withheld them pending the decision of another case by a Bench of this Court. The explanations offered by Mr Bourne afford no grounds whatsoever for withholding these applications. The applications were addressed to this Court and this Court and this Court only can adjudicate on a question whether an application lies to it or not. Further, it is this Court and this Court only that can decide whether the hearing of an application should wait the decision of some other application. Whether a point is common to a number of applications, is a matter which only this Court can decide and in my view the withholding of these applications for a period of three to four months cannot be justified on any ground whatsoever. Officers of the Government were arrogating to themselves the functions of this Court and that they had no right whatsoever to do. I wish to make it clear that withholding any petition addressed to this Court — no matter on what ground — cannot be justified. The petition may appear to be frivolous or may appear to afford no ground whatsoever for the release of the detained person, but it is this Court and this Court only which can decide such matters. Unreasonably withholding petitions addressed to this Court appears to me to be interfering with the due course of justice, and I feel it my duty to say that if any petitions are withheld in future, the person withholding them will be rendering himself liable to proceedings for interfering with the due course of justice.

I sincerely hope that in future all petitions addressed to this Court will be forwarded for disposal without delay. That this Court may be flooded with such petitions is no ground for not forwarding them. Even after this case in which it is held that ordinance 3 of 1944 ousts the jurisdiction of this Court, petitions must be forwarded as it will be for this Court in every case to decide whether it has or has not jurisdiction in the matter. I would grant the petitioners a certificate under S.205, Government of India Act.

Petitions dismissed.

Blacker J. — I agree.

Munir J. — I agree.

G.N.

1, 2, 4. Docs 27, 33 may be seen.

3. Doc. 145.

169: Jatindra Gupta and others (petitioners) v. Emperor [Derbyshire C.J. and Lodge J. (16 Feb. 1944)]

AIR, Vol. 31, 1944, Calcutta, p. 284

Criminal Misc. Case No. 236 of 1943, Decided on 16th February 1944.

P.K. Bose for N.C. Talukdar, Arunendra Nath Tagore, Nandlal Roy, Gurudas Bhattacharjee, Nityaranjan Biswas, Sailendranath Chowdhury, Nagendra Mohan Saha and Sanat Kumar Rakshit — for petitioners.

S.M. Bose Advocate-General and B. Das for the Crown.

Derbyshire C.J. — On 7th September 1943, a Bench of this Court issued a rule under S. 491, Criminal P.C., calling upon the Chief Secretary to the Government of Bengal and the Superintendent of the Dacca Central Jail to show cause why the petitioners, alleged to be illegally and improperly detained in custody, should not be brought up before the Court and dealt with according to law or set at liberty. The number of persons concerned in this rule was 176. The applicants made a joint application for the rule. They were apparently all confined in jail at Dacca. They are represented before us by Mr P.K. Bose who agrees that the cases all stand on the same footing. There, however, is one exception, namely, that of petitioner 21, Phyush Kiron Rauth, whose papers have not been available, and his case is not, therefore taken in the present proceedings. The Advocate General has appeared on behalf of the Government of Bengal to show cause against the rule. We are informed, and it is not disputed, that with the exception of four person orders for the detention of the applications were made by the Governor of Bengal. In the cases of the others, they were made by the District Magistrate of Chittagong to whom authority to make the orders had been delegated. The orders were originally made under R.26(1) (b), Defence of India Rules. Rule 26 was, in April 1943, by the Federal Court, declared ultra vires of S.2, Defence of India Act. In May 1943, an ordinance was promulgated by the Governor General validating the orders that had been made under R.26. The validating of the ordinance was questioned in this Court in May 1943 and in September 1943 by the Federal Court. In the meantime applications had been made by persons including the present applications, to this Court for orders under S. 491, Criminal P.C. It was as a result of those applications that the rule in question was granted. On 15th January 1944, another ordinance, Ordinance 3 of 1944, was promulgated by the Governor General which recites.

[*Omitted:* Text of preamble to Ordinance 3 of 1944, and summary of its clauses — Ed.]

It has been contended on behalf of the Government of Bengal that this Court has no jurisdiction to deal with this rule by reason of the provisions of cl. 10. Mr P.K. Bose on the other hand, has contended that the provisions of cl. 10 which in effect ousts the jurisdiction of the Court to deal with this matter are themselves invalid as being beyond the powers of the Governor-General. If cl. 10 (2) is valid then there is an end of these proceedings because they have under the Ordinance been discharged, that is, put an end to, as from 15th January 1944, and we have no further powers to deal with them.

Mr P.K. Bose for the applicants has further contended that the Governor-General in ousting the jurisdiction of the Courts has acted contrary to the provisions of S. 110, Government of India Act, 1935.

[Omitted: The Chief Justice considers this argument and rejects it — Ed.]

The result is that we have no further powers to deal with these applications. For that reason we formally make the order that this rule is discharged. Certificate under S. 205, Government of India Act, is granted in this case.

Rule discharged.

Lodge J. — I agree.

170: Report in *The Hindu* dated 20.2.44 on the Calcutta High Court Judgement by C.J., Lodge J.

File No. 25/9/44 — Home Poll (I)

[NAI]

Hindu

20th February '44

Validity of Detention Ordinance

Bengal Detenus' Habeas Corpus Petition Dismissed. AIR, 31, 1944 Calcutta (284–287)

The rules obtained by 351 security prisoners from different parts of Bengal and Assam in the nature of *habeas corpus* under section 491 Cr. P.C. against the orders of detention passed under Rules 26 of the Defence of India Rules have been discharged by the Chief justice and Mr Justice Lodge at the Calcutta High Court, as in their opinion, Clause 10 (2) of Ordinance III of 1944 (Restriction and Detention Ordinance), which ousted the jurisdiction of the Court to give relief, was not invalid.

The effect of the clause in the new Ordinance, said their Lordships, was that the rules obtained in these matters were deemed to be discharged on January 15, 1944, when the new ordinance was promulgated, and the Court had no power to deal with these applications. For that reason, their Lordships formally ordered the discharge of the rules.

A certificate for leave to appeal under Section 205 of the Government of India Act to the Federal Court was granted in these matters.

Barring some three or four cases, this disposed of all the cases of security prisoners pending in this Court.

The decision that Clause 10 (2) of the new Ordinance was not invalid was given by their Lordships while delivering judgment in the rule obtained in the nature of *habeas corpus* under section 491 Cr. P.C. by 175 security prisoners from Dacca Jail, where the point was taken on behalf of the prisoners that Clause 18 was ultra vires. — A.P.I.

171: Official Notings (extracts) (dt 21.2.44)

File No. 44/2/43 – Home Poll (I)

[NAI]

Notes in the Home Department on Correspondence with Punjab Government Regarding Interrogation

D.S.(I). I am unable to follow what specific proposal of ours Mr Bourne's objecting to now.¹ We may reply that we have no intention of informing the Legislature that the normal period for police custody for interrogation is 2 months & that we presume from the second para of Mr Bourne's letter that we shall be informed whenever any of our detenus is to be interrogated in police custody for more than two months. We recognise that the interrogators would be in the best position to suggest extension of the period or not but final decision must be in our hand.

V. Sahay
21.2.44.

Additional Secretary.

I am afraid he is fastening on the word 'prescribe' in our previous letter. Please draft a reply more or less as above but bringing out the point that all that we want is an understanding between ourselves – not to be made public in any way – which will enable us to fulfil our own responsibilities to our prisoners.

R. Tottenham.
21/2/

D.S.(I)

Docs 151 and 154 may be seen.

172: Extracts from Fortnightly Report from C.P. & Berar for the second half of February 1944

File No. 18/2/44 – Home Poll (I)

[NAI]

7. Notice under section 7 of Ordinance III of 1944 have been served on all the detenus of the Province, who now number about 270. Precautions have been taken to prevent leakage of the contents of the notices, and the attention of the Press has also been drawn to the provisions of section II of the Ordinance. The serving of these notices has given rise to further hopes that more releases will take place on receipt of the representations. The more prominent

Congressmen under detentions, however, are reported to have reconciled themselves to an indefinite period of detention after reading the Viceroy's address to the Central Legislature.

173: Intelligence Bureau enclosing political circulars issued by CPI on how to reply to Ordinance III

File No. 7/23/47 – Home Poll (I)
[NAI]

Intelligence Bureau
(Home Department).

Home Department will be interested in the enclosed copies of two political circulars issued by C.P.I. Headquarters, Bombay in connection with Section 7 of Ordinance III of 1944. The first circular lays down the reply to be made by the communist detenus; the second prescribes the form of reply to be made by members of Congress committees.

2. The C.P.I. leaders have been quick in securing a specimen of the notice sent by the Bombay Government to the Detenus.

(G. Ahmed),
Deputy Director (A),
22-2-44.

Copies

Pol. Circular No. 10/44.

Bombay 10/2/44.

All P.C. Secys.

On Government Charge-sheets to Detenus.

Comrade,

Under the new Ordinance, the cases of detenus are being reviewed. For this purpose, a charge-sheet will be sent to each detenu, specifying the charge of suspicion against him.

Form of Answer

Since the charge-sheet will not be of a general nature, it would be difficult to send a general form of answer. But the answer should be as follows:

- (1) Denying the specific charge of sabotage or anti-war activity.
- (2) Adding 'that as a member or sympathizer of the C.P.I., I support its policy and on principle am opposed to sabotages and stand for National Defence against the Fascists. I stand for National Unity to strengthen our National Defence.'

Nothing more need be said.

What You Must Do

Inform our Comrades in jail that —

- (1) They should immediately reply to such charge-sheets,
- (2) In particular see that Congress detenus whom our Comrades have succeeded in convincing against sabotage and for Unity, are reached and they be induced to adopt this procedure.

This is very important.

Lal Salaams.

Pol. Circular No. 11/1944.

Bombay, 13th February 1944.

Government's Notice on detenus and what our answer should be

Dear Comrade,

We have received a specimen of the notice sent by the Bombay Government to the detenus. It is as follows:

'In pursuance of section 7 of Ordinance No. III of 1944, you . . . are informed that the grounds for your detention were that you were . . . a prominent and active member of the Congress and there was reason to suppose that if not detained, you would take an active part in the mass movement sanctioned by All-India Congress Committee on the 8th August 1942 and thereby impede the successful prosecution of the war.

2. You are informed that you have a right to make a representation in writing against the order under which you are detained. If you wish to make such a representation, you should address it to the undersigned and forward it through the Superintendent of the jail as soon as possible.

Signed. For Secretary to the
Government of Bombay, Home Department.

31st January 1944.

Draft Reply

I am a member of the . . . Congress Committee. In respect of the charge against me, I state.

- (1) That while it was true that the A.I.C.C. at Bombay had decided to start a movement under Gandhiji's leadership, it was categorically stated by Mahatma Gandhi that no movement would start till —
 - (a) Mahatma Gandhi had met the Viceroy and explored the avenues of settlement.
 - (b) Mahatma Gandhi gave a call for a movement.
- (2) There was thus no movement started by the Congress since the leaders were arrested before any of the two things mentioned above could be achieved.
- (3) I believe that this war against Fascist Powers must be won. I am opposed to sabotage as I believe it hits us and helps only the aggressor at the door.
- (4) I believe that a National Government composed of all major parties can alone organise effectively the defence of our country, and enthuse the people to fight the invading enemy.

Holding these views, I maintain that my detention is unjustified and I should be released unconditionally.

174: Government of Bombay to the Government of India (telegram) (whether security prisoners to be allowed interviews with their legal advisers)

File No. 44/32/44 – Home Poll (I)
[NAI]

Telegram R.

Confidential. 1717.

From . . . Bombay Special Bombay.
To . . . Home Department, New Delhi.

No 54.

*Dated 23rd (recd: 24th) February 1944.
T.O.O. 1700. T.O.R. 0700.*

Several requests have been made by Security prisoners for interviews with their legal Advisers for purpose of framing their representations in reply to notices delivered to them under section 7 of Restriction and Detention Ordinance 1944. Please telegraph whether intention of section 11 (2) of Ordinance is that each security prisoner should be allowed interview with his legal adviser if he so desires for sole purpose of framing his representation.

Secretary & Department (Home).

175 Government of Madras to the Government of India (whether security prisoners to be allowed interviews with their legal advisers)

File No. 44/32/44 – Home Poll (I)
[NAI]

Telegram R

Confidential

From . . . *Resonabili*, Madras.
To . . . Home Department, New Delhi

No. 33

*Dated & recd: 25th February 1944.
T.O.O. 1340 T.O.R. 2120.*

Express

Reference 44/15/44 – Political (I). Notices have been served on prisoners. Shankar Lal has

asked for interview with legal Representative. Probably Bose will make the same request. Solicit Government of India's orders urgently.

Secretary and Department (Home).

176: Government of India to all Provincial Governments

File No. 44/32/44 - Home Poll (I)

[NAI]

Confidential

2196

Telegram R No. 2196

dated 25th February 1944.

From — Home Department, New Delhi.

To — The Chief Secretary to the Government of:

Madras

Bengal

United Provinces

Punjab

Bihar

C.P. & Berar

Assam

N.W.F.P.

Orissa

Sind.

Express

Question has arisen whether security prisoners should be allowed interviews with legal advisers for purpose of framing representations in reply to communications under section 7 of Restriction and Detention Ordinance. Please telegraph your views and existing or proposed practice in your Province.

Secretary & Department (2)



177: Government of India to the Government of Bombay (interim reply Doc. 175)

File No. 44/32/44 – Home Poll (I)
[NAI]

Dated 25.2.44.

No. 44/57/43 – Poll (I)

From . . . Home, New Delhi.
To . . . Restis, Bombay.

Express

Your telegram No. 54 dated 23rd February¹ Interviews with legal advisers. We are ascertaining practice in Provinces and further reply will follow.

¹ Doc. 174

178: Official Notings (whether to let the detenus have legal advice in drafting replies to Government's show cause notice) (dt 25.2.1944)

File No. 44/32/44 – Home Poll (I)
[NAI]

P.U.C.

The file regarding amendment of our security prisoners order to admit of interviews with legal advisers has already under submission. I have obtained from Legislative Department and placed below our File No. 44/57/43 – Poll (I) regarding promulgation of the Restriction and Detention Ordinance in case this is needed, though it is not, I think, directly relevant.

2. The relevant portion of section 11(10) of our Security prisoners order reads:

A Security prisoner may, with the permission of the authority under whose orders he is detained, be allowed . . . to interview his legal adviser in connection with a legal proceeding to which the security prisoner is or will be a party.

It seems to me clear enough that the framing of a representation in answer to a communication under section 7 of the Restriction and Detention Ordinance can in no sense be termed a legal proceeding and that legal advisers should not, therefore, be consulted for this purpose. This view is supported by the attitude which we adopted during the previous review of cases (Dam committee¹ file will be put up if desired) in which it was definitely laid down that legal assistance could not be had in framing the replies to our notices.

3. As verbally directed by Additional Secretary, I put up a draft telegram to provinces

and draft *ad interim* reply to Bombay. It is for consideration, however, whether we should not take a definite line ourselves without consulting provinces.

This could, I should have thought, legitimately be held to be a matter of principle to be decided by the Central Government.

(S.J.L. Olver)
25.2.44.

D.S. (I).

Strictly speaking, I think it is possible to include the making of a representation under 57 of Ordinance III of 1943 in the term 'legal proceedings' but it was not the intention of S-11 (10) of our security prisoners order to permit lawyers to come in on this kind of proceedings.

Bombay are not concerned however with a security prisoners order — they are referring to the proviso to s.11 (2) of ordinance III as indirectly permitting consultation with legal adviser in respect of representations.

I think the correct interpretation of this proviso to s.11 (2) is that the option to permit consultation with a legal adviser remains with Government and if Government permits it a defence may make the relevant disclosures to his lawyer with impunity.

If this is correct, we would be entitled to say that legally there being no obligation to allow lawyers, 'legal proceedings' in our security prisoners order should be interpreted as equivalent to proceedings in a court of law and in connection with representations under 37, lawyers should not be allowed.

We may however obtain the views of provincial Government first as in the draft.

V. Sahay.
25/2

Additional Secretary.

HM definitely wishes to ascertain Provincial Govts views and practice without giving them a lead. There was some discussion, however, about the necessity for, and effect of, the proviso to s.11(2). This might be looked up and while we are awaiting replies, we may perhaps consult Lg. Department further.

Tottenham
25/2/44

1 See Doc 36 in Chapter XV
(Ref. NAI File - 44/43/42 - Home Poll (I))



179: Starred questions in the C.L.A. and the answers given by the Home Member (Independence Day Pledge) (26.2.1944–2.3.1944)

File No. 22/31/44 – Home Poll (I)

[NAI]

Legislative Assembly

The Question, is down for meeting

(On the 26.2.1944.

Mr Akhil Chandra Datta:

- (a) With reference to the statement made by the Honourable Sir Reginald Maxwell in this Assembly on the 7th February, 1944, viz., 'Government have been advised legally that the pledge (Congress pledge) is a seditious document', will the Honourable the Home Member be pleased to state when that pledge was first placed before the country and when Government came to know of it?
- (b) Was any exception taken to it by Government at the time on the ground that it is seditious document and that it was proscribed?
- (c) When have Government been advised that it was a seditious document?
- (d) What was the occasion for Government's seeking and obtaining legal opinion whether it was seditious or not?
- (e) When was that opinion given; and by whom?
- (f) Has there been any prosecution of any Congress member for sedition on the basis that the Congress pledge was a seditious document?
- (g) Have Government obtained the verdict of any competent court in support of their contention that the Congress pledge was a seditious document?
- (h) Was that ground put forward anywhere in support of the order banning Independence Day celebrations?

Legislative Assembly.

(To be answered on the 26th February 1944.)

Reply to Mr Akhil Chandra Datta's starred question No. 255 regarding the Congress (Independence) Pledge.

The Honourable Sir Reginald Maxwell:

- (a) The pledge first came to notice in January 1930. But different versions have been current at different times.
- (b) It was not then formally proscribed. But that does not mean that Government regarded its wordings as legitimate.
- (c) In 1934 and again in 1937.
- (d) Government had information in 1937 that it was intended to revive the pledge in its original form.

- (e) By the legal advisers of Government.
- (f) I have been unable to make the researches necessary to answer these parts of the question
- (g) since the information would have to be obtained from the Provincial Governments.
- (h) Independence Day celebrations have been prevented only on the grounds that the pledge contained seditious language or that they were calculated to assist the operations of an unlawful association.

Supplementaries to question No. 255 replied on 26-2-44.

Mr Akhil Chindra Datta: May I know whether the pledge taken as a whole is seditious or any particular portion of it?

The Honourable Sir Reginald Maxwell: Part of the language used is seditious.

Mr T. T. Krishnamachari: With reference to part (d) of his answer, am I right in understanding the Honourable Member to say that the last occasion when legal opinion was obtained was in 1937 and whether he is aware that in 1938 the pledge was redrafted?

The Honourable Sir Reginald Maxwell: I have said that different versions were current at different times.

Pundit Lakshmi Kanta Maitra: Where did the Government get the official version of the Congress pledge did they seek for it?

The Honourable Sir Reginald Maxwell: Government have their own ways of getting information.

Pandit Lakshmi Kanta Maitra: I want to know whether the Honourable Member's Department relied solely on press reports or they cared to ascertain from the Congress what the independence pledge was.

Supplementaries to Question No. 293 in the *Legislative Assembly dated the 2nd March 1944*

Mr K. C. Neogy: I do not know whether the Honourable Member has meant his statement to cover the second part of part (a) of my question; that is to say, when this legal advice was taken by Government and who were the legal authorities who gave the opinion?

The Hon'ble Sir Reginald Maxwell: I answered the question of when, in answer to part (c) of Mr Datta's question on the 26th February.

Mr K. C. Neogy: Who are the legal authorities?

The Hon'ble Sir Reginald Maxwell: It is not the practice of Government to disclose the legal authorities from whom they receive advice or to make public the advice which they receive.

Mr K. C. Neogy: When was this advice obtained and first acted upon by way of prosecution or anything like that?

The Hon'ble Sir Reginald Maxwell: I answered that question in reply to supplementaries on the last occasion.

Sardar Sant Singh: May I know if this Congress pledge being a seditious document was a discovery or an invention?

(No Answer)



180:

Extract from notes of the Defence Department
reg. validity of Sec. 10 of Ord. III of 1944
(dt 26.2.1944–12.4.1944) (News item from
The Hindustan Times quoted)

File No. 25/9/44 – Home Poll (I)
[NAI]

Hindustan Times
16th February '44.

Ouster of Jurisdiction of High Court
Ordinance III of 1944.

Validity of Saving Provisions Questioned

Calcutta, February 15 – The validity of the Restriction and Detention Ordinance (Ordinance III of 1944) relating to ouster of the jurisdiction of the High Courts challenged before the Calcutta High Court in connection with a rule obtained by 176 security prisoners from the Dacca Central Jail in the nature of *habeas corpus* against orders of detention passed under Rule 26 of the Defence of India Rules.¹

Before the Chief Justice and Mr Justice Lodge, counsel for the detenus questioned the validity of the provisions of Section 10 (1) and (2) of the Ordinance which 'Inter alia' stated that orders passed under the Ordinance could not be called in question by any court and no court should grant any relief under section 491, Cr. P.C., and that all pending rule under Section 491, should be discharged. He argued that Section 10 of the Ordinance was a total ouster of the superior Court of records and this could only be effected by express language and the language must be the language of an Act of parliament. Under the purported exercise of granting certain executive powers to certain authority, the Ordinance in Section 10 (1) and (2) had attempted to deprive, amongst other objects, the chartered High Courts of certain powers vested in them and in the judges by Royal Charter, letters patent and Imperial Statutes.

Hearing of the rules has not concluded. – A.P.I.

Official Comments

The following is the text of section 10 (1) and (2) of the Ordinance No. III promulgated on January 15, 1944, empowering the Central Government and the Provincial Governments and any officer or authority to whom the Central Government or the Provincial Government may delegate its powers in this behalf to restrict the movements and actions of and to place in detention and detain certain persons, to regulate the exercise of these powers and the duration of orders made in such exercise and to confirm the validity of the past exercise of such powers under Rule 26 of the Defence of India Rules.

Saving as to orders. – (1) No order made under this Ordinance, and no order having effect by virtue of section 6 as if it had been made under this Ordinance, shall be called in

question in any Court, and no Court shall have power to make any order under Section 491 of the Code of Criminal Procedure, 1893 (V of 1898), in respect of any order made under of having effect under this Ordinance, or in respect of any person the subject of such an order.

(2) If at the commencement of this Ordinance there is pending in any Court any proceeding by which the validity of an order having effect by virtue of Section 6 as if it had been made under this Ordinance is called in question that proceeding is hereby discharged.

Defence Department

Legislative Department may see as suggested by D.S. It may, however, be mentioned that H.D. No. 44/57/43 - Poll (I) dated 3.12.43. Letter circulating the draft of the Detention and Restriction Ordinance to Provinces recognised that Section 10 of this Ordinance is not likely to be any more effective than Section 16 Sec. 491 of C of Cr. Procedure (This letter was, perhaps, seen by leg. Deptt.) such being the position, it seems we have only to wait and see what the High Court say about it.

L.J.D. Wakely, 26.2.44

ltd., 25.2.44.

A.S., 25.2.44.

Legislative Department.

D.D.u/o No. 1787-DC/44, dated 26.2.44.

We have ourselves seen this press report. The Calcutta High Court's pronouncement on the question may be awaited with a fair degree of confidence that it is unlikely to uphold the security prisoners' contention.

K. Sundaram, 28.2.44.

Judgment in favour of the Crown has already been pronounced. Vide the cutting at F (News item) (return regretted) the last sentence of which leaves no doubts as to the identity of the 2 cases.

G.H. Spence, 29.2.44.

Defence Department.

L.D. u/o No. D.154/44-C&G (judl) dated 29.2.44.

Defence Department.

We have since heard from the Provincial Government also. It would be useful to have a copy of the relevant judgment.² A draft to Bengal is put up.³ After issue, Home Department may see. They will no doubt, consider whether other Provincial Governments should be informed of the Calcutta ruling.

ltd., 1.3.44.

A.S., 1.3.44.

S.K. Kaiwar, 1.3.44.

Notes in the Defence Department.

Serial No. 3 (receipt)

This is the Calcutta judgment in which the High Court recognise that Section 10 of the Restriction and Detention Ordinance (No. III) 1944 successfully ousts the jurisdiction of the High Court to issue of writs of *habeas corpus* under section 491 of the Cr. P.C. The relevant file was obtained from us by Home Department (Mr Olver) on 21-3-44. That Department may see and show this judgment to Legislative Department.

ltd., 29.3.44.

S.R. Kaiwar, 30.3.44.

Home Department.

D.D.u/o No. 2848-DC/44, dated 30.3.44.

With file.

S.J.L. Olver, 30.3.44.

I understand from Mr Mitra that an appeal has now been filed in the Federal Court. L.D. should therefore see this judgment without delay. We should be glad to be kept informed of progress.

S.J.L. Olver, 4.4.44.

L.D

H.D. u/o No. D-2158/44 – Poll (I) dated 4-4-44.

Submitted.

ltd., 5.4.44.

ltd, 5.4.44.

Seen thanks.

Seen thanks
K. Sundaram, 6.4.44.

On inquiry in the Federal Court I understand that appeal relating to Ordinance III of 1944 from the decision of the Patna High Court is received today by the Federal Court Office. There is no other case in the Federal Court relating to this Ordinance. Mr Mitra had in mind an appeal relating to another Ordinance – No. XXIX of 1943–which is coming on for hearing on the 14th inst.

In connection with the appeal re: Ordinance III of 1944, of which we expect to receive notice in due course, we shall be obliged if the Defence Department will supply us with three spare copies of the judgment of the Calcutta High Court which will be required for the use of our Counsel in the case.

K.G. Bhandarkar, 11.4.44.

G.H. Spence, 12.4.44.

1 Doc. 169.

2 Doc. 169.

3 Not printed.

181: Official Notings regarding legal advice to security prisoners (dt 28.2.1944-2.3.1944) (extracts)

File No. 44/32/44 - Home Poll (I)
[NAL]

Discussion about the point whether security prisoners should be allowed legal advice for preparing their representation and the drafting of Clause 11 of Ordinance III as recorded on our F. 44/57/43 - Poll (I) may be seen.¹ Mr Bartley's note of 22-10-43² answers 'A' of Additional Secy.'s note dated 25-2-44.³

Signed
28.2.44.

From the wording of the proviso to section 11 (2) of the Ordinance, and from the terms of Mr Bartley's note of 22.10.43, I am inclined to think that Mr Bartley himself had in mind the permitting of consultation by security prisoners with legal advisers before making their representations under section 7. That this conflicts with the clear view to the contrary expressed in Additional Secretary's note of 25.8.43¹ appears subsequently to have passed unnoticed. Subject to what provinces may have to say in reply to our telegram at serial No. 3, I think there is little doubt that we must abide by the views expressed by Additional Secretary and H M at page 1 ante. We may have some difficulty in doing so, since the obvious inference from the proviso as at present worded is that it was the intention for such interviews to be allowed. An arguable alternative application of the proviso, which is needed if it is to have any meaning at all, seems to me to exist in that in any legitimate legal proceedings e.g. *habeas corpus* proceedings, where an interview with a legal adviser had been granted in accordance with our rules, the proviso would serve to allow him to show to his legal adviser the grounds of detention communicated and his representation in reply -- matters which might legitimately be used by the counsel for appreciating and preparing the case, though subsequent reference to them in Court would be prohibited.

(S.J.L. Oliver)
29.2.44

I see no conflict between Mr Bartley's view and the Additional Secretary's view on p. 1.³ Do Leg. Department agree that the effect of the proviso merely is to permit a detenu to make disclosures to his Lawyer when Government permitted such consultation and not otherwise, and that its effect is not to confer a right on detenus to consult lawyers in respect of representations.

V. Sahay
29.2.44.

Additional Secretary

I should say it obviously conferred no kind of right.

R. Tottenham
29.2.44.

Legislative Department.

H.D. u/o No. 44/32/44 – Poll (I) dated 29/2/44.

The proviso certainly does not confer, by implication or otherwise, any right on the person detained to an interview with his legal adviser and Government's power to regulate such interviews by means or orders under S.3 (4) is unfettered.

R. Sundaram
1.3.44

- 1 Doc. 79.
2 Not printed.
3 See Doc. 178.
4 and 5. Doc 81.

182: Government of India to the Government of Bombay (about C.P.I. circulars)

File No. 7/23/43 – Home Poll (I)
[NAI]

Secret
File No.
Serial No.
D.O. Letter

Department/Office
Letter
Draft Memorandum

Telegram
No. 44/33/44 – Poll (I)

Dated 28.2.44

To
H.V.R. Iengar, Esq., C.I.E., I.C.S.
Secretary to the Government of Bombay
Home Department, Bombay.

My dear Iengar,
We have seen copies of circulars No. 10/44 dated 13.2.44 from the C.P.I. Headquarters, Bombay, regarding communications to Communist Security prisoners under section 7 of

Ordinance III of 1944 and the form which representations from the security prisoners in reply should take;¹ we understand that your Special Branch has already seen these circulars. The second of these circulars contains a copy of a specimen communication as supplied by the Bombay Government to its security prisoners. This would appear to indicate a leakage of some importance and we should be glad to have your comments and to know what action you are taking.

Yours sincerely,

Signed
D.S.(I)

1 Enclosure to Doc. 173.

183: Government of India to all Provincial Governments

File No. 44/71/43 - Home Poll (I)
[NAI]

No. 2-DC (14)/44.

Government of India,
Defence Department

New Delhi, 29th February 1944.

To
All Provincial Governments & Chief Commissioners.

Please refer to this Department's secret letter No. 2-DC (10)/43 dated the 8th January 1943.¹

2. In a recent case before a High Court, the Hon'ble Judges commented unfavourably on the fact that a person detained by order under Defence of India Rule 26 (1) (b) had not at once been given a copy of the order under which he was detained.² The Government of India consider it most desirable that copies of detention orders should be supplied immediately to persons detained thereunder, and I am to ask that, if the Provincial Government see no objection, they will issue instructions to effect.

L.J.D. Wakely.
Deputy Secretary to the Government of India

1 Not printed.

2 Docs 143 & 146



184: Government of Bihar to the Government of India regarding interview of security prisoners

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
1900

Telegram R

From
Bihar, Patna

Home Department, New Delhi

No. 250 CR

Dated 29th February (recd. 1st March) 1944

TOO 1625

TOR 0005

Important

Reference your telegrams No. 2196 and No. 2197 dated February 26th.¹ This Government have not allowed interviews with lawyers for the purpose indicated and do not propose to do so. Forms of communication of reason for detention as suggested by Government of India in letter No. 44/57/43 – Poll (I) dated 3rd December 1943 are simply bald statements unsupported by evidence and replies where given are likely to be equally bald denials requiring no legal assistance. This Government are arranging interviews with each DETENU by the Divisional Commissioner and Deputy Inspector-General of Police and consider this will be best method of recognising at fair assessment prisoner's case and of hearing what he has to say. This Government deprecate non-official Committee lest they be subjected to pressure.

Secretary & Department
LEM

¹ Doc. 176.



185: Government of United Provinces to the Government of India regarding access to legal advice for security prisoners

File No. 44/32/44 – Home Poll (I)

[NAI]

Confidential

Telegram R

From . . . Chief Secretary U.P. Sitapur.

To . . . Secretary, Home Department, New Delhi.

No. 389

Dated (and received) 1st March 1944.

T.O.O. 1030 – T.O.R. 1350

Immediate

Your Circular telegrams Nos 2196¹ and 2197² regarding Security prisoners.

1. Governor strongly opposes suggestion for interview with legal advisers which are not at present allowed. Whatever might be precautions taken or undertakings given such interviews would establish dangerous contact between *Detenus* and outside sympathisers and would give excellent material for anti – Government publicity. Further in Governor's view interviews unnecessary from point of view of *Detenus* as no questions of law arise and replies will deal solely with questions of fact.

2. Governor is equally opposed to appointment of Advisory Committees either official or non official. Official Committee would carry no weight and since all cases are now considered by Home Secretary, Adviser and Governor himself official Committee would provide no better machinery than exists at present.

3. Appointment of non-official Committee Governor considers quite out of the question. Any non-official Committee which would examine these cases dispassionately would be regarded as packed and would not carry slightest weight virtually while much of material on which detention of prisoners is justified could not be placed before non-officials. Governor has already indicated his reasons for opposing placing of Bajinath case before even a selected High Court Judge. Those reasons apply a *fortiori* to present proposal.

4. As a matter of administration the work involved in examining replies of over 1200 security prisoners is already very heavy indeed and would be greatly increased by adding any Committee to present machinery.

5. The grounds and justification for (group corrupt-detention?) and continued detention are most carefully examined under present system. A very large number of *Detenus* have been released and position of those in detention is constantly under review. None will remain in the detention save those whose detention is not merely desirable but necessary and Governor deprecates entertainment of suggestions such as these designed to make task of executive in maintaining good Government in critical stage of war more difficult.

Secretary & Department (2)

186: Government of NWF Province to the Government of India (regarding access to legal advise for security prisoners)

File No. 44/32/44 – Home Poll (I)
[NAI]

Telegram R

From – Norwef, Peshawar
To – Home Department, New Delhi

No. 29/BI

Dated 1st (recd 2nd) March 1944
T.O.O. 1630
T.O.R. 0030

Your telegram No. 2196¹ Circular February 26th.

No request for permission to interview legal advisers for purpose of framing representation has so far been received from security prisoners in this Province nor do Provincial Government consider it necessary to grant this concession.

Secretary & Department 2.

¹ Doc 176 (dt 25.2.56).

187: Government of Madras to the Government of India (regarding accession to legal advice for S.Ps)

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential 1983

Telegram R

From . . . Resonabili, Madras
To . . . Home Department, New Delhi

No. 38

Dated 2nd (recd:3rd) March 1944.
T.O.O. 1240
T.O.R. 0800

Your telegram No. 2196 dated 26th February.¹ Proviso to sub-section (2) of section 11 of

ordinance implies legal advice is permissible. Government of Madras are already allowing legal advisers to Detenus who desire them.

Secretary and Department

1 Doc. 176 (dt 25.2.44).

188: Government of Punjab to the Government of India

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential 2013

Telegram R

From – Punjab, Lahore
To – Home Department, New Delhi

No. 6

Dated (& recd) 3rd March 1944

T.O.O. 1940

T.O.R. 2245

Express

Your telegram No. 2196 dated February 26th.¹

Strongly opposed to grant interviews with legal Advisers for ostensible purpose of framing representations against notices served under Section 7 of Restriction and Detention Ordinance. Legal advice in matters of fact not required. Such interviews will inevitably be used for purposes of vexation.

Secretary & Department

1 Doc. 176 (dt 25.2.44).



189: Government of India to the Government of Madras (forwarding petitions from security prisoners)

File No. 44/37/43 – Home Poll (I)
[NAI]

Secret
D.O. No. 44/37/43 – Poll (I).

Government of India,
Home Department.

New Delhi, the 4th March 1944.

My dear Priestley/etc.

We have recently experienced some difficulty in dealing with questions in the Legislature which referred to certain petitions from Central Government security prisoners detained in a Provincial Jail which, although addressed to the Central Government, were – in accordance with the Provincial Security Prisoners Rules on the subject – withheld by the Provincial Government concerned.¹ Provincial Governments Security Prisoners Rules vary in their provisions regarding the forwarding of petitions from security prisoners; in most cases, it is laid down that petitions should be forwarded to Government unless couched in objectionable terms, when they may be withheld or destroyed, the security prisoner concerned being informed. We have no wish to interfere in the practice already obtaining as far as Provincial security prisoners are concerned. We consider it essential, however, in the case of any Central Government security prisoners that may be detained in the Province, that any petition addressed to the Central Government or to a Member of the Government of India should be forwarded without delay to this Department regardless of its contents; you will doubtless at the same time add such comments as you may consider necessary or appropriate.

2. We are not aware what your practice is in respect of petitions addressed by your security prisoners to the High Court. In view of the recent judgment of the Lahore High Court in the case Criminal Miscellaneous No. 796 of 1943, which has doubtless come to your notice, we would suggest that it would be desirable for any petition addressed by a security prisoner in the Province to the High Court to be forwarded without delay to the Court, again regardless of its contents. We should, in any case, be glad if this course could be adopted in the case of any Central Government security prisoners detained in the Province, copies of any such petitions being at the same time forwarded to us for information.

Yours sincerely,
(R. Tottenham).

1. Doc. 168 (16-2-44).

190. Government of India to the Government of Bengal

Govt. of Bengal (Home) File No. 6/44
[Bengal State Archives]

D.O. No. 3/2/44 – Poll (I)

Government of India
Home Department

New Delhi, the 4th March, 1944.

My dear Porter,

Would you please refer to Mr Vishnu Sahay's D.O. letter No. 3/2/44 – Poll (I) of the 7th February, 1944, about the report of the reading of the 'Independence pledge' in the Calcutta Corporation?¹ We should be grateful for an early reply.

Yours sincerely,
(S.J.L. Olver)

To
A.E. Porter Esq., C.I.E., I.C.S.
Additional Secretary to the
Government of Bengal
Home Department, Calcutta.

¹ See Docs 147, 148 and 167.

191. Government of Sind to the Government of India (regarding access to legal advice for S.Ps)

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential 2071

Telegram R

From . . . Sind, Karachi.
To . . . Home Department, New Delhi

No. S-81

Dated 4th (recd: 5th) March 1944.
T.O.O. 1700
T.O.R. 1530

Reference Home Department circular telegram No. 2196¹ of February 26th. Legal advice for

the purpose of framing representations in reply to communications under section 7 of Restriction and Detention ordinance has not been permitted here. Recommend legal assistance for the purpose in question should not be granted. Would refer here to paragraph No. 7 of Home Department letter No. 44/57/43-Political (I) dated January 15th 1944.²

Secretary and Department (2)

¹ Doc. 176 (25.2.44).

² Doc. 145.

192: Government of Central Provinces & Berar to the Government of India (regarding access to legal advice for S.Ps)

File No. 44/32/44 – Home Poll (I)

Confidential
2155

Telegram R

From . . . C.P. Nagpur.

To . . . Home Department, New Delhi.

No. 259-353/3

Dated (and recd) 7th March 1944.

T.O.O. 1335

T.O.R. 2300

Express

Your telegram No. 2196 dated February 26th¹ Legal interviews. Provincial Government is advised that proviso to section 11 (2) ordinance III by implication permits (gr omitted) *Detenu's* legal adviser. Even otherwise Provincial Government considers that interviews with legal advisers should be permitted on the analogy of practice adopted in respect of *Habeas corpus* applications.

Secretary & Department

¹ Doc. 176.



193

Official Notings regarding access to legal advice for S.Ps (dt 7.3.1944-8.3.1944) (extracts)

File No. 44/32/44 - Home Poll (I)

[NAI]

2. Madras Government have taken the view that the proviso to section 11 (2) of the Ordinance raised the presumption that it was our intention that interviews should be permitted for the purpose of preparing representations and have proceeded accordingly.¹ I understand from Mr Mellor that C.C., Delhi, has taken the same view and allowed interviews in one or two cases; I have asked that orders in applications for interview pending with C.C., Delhi, should be held up until our policy decision is communicated to them. The remaining Provincial replies received are unanimous in opposing the grant of such interviews as a matter of principle. We did not in our telegram at serial No. 3² refer specifically to the proviso to section 11(2) of the Ordinance and I am doubtful whether the majority of Provinces in replying have considered this proviso and its implications.³ However, we are concerned at present with policy and the legal aspect need not concern us further in view of Legislative Department's note of 12-3-44.⁴ I think we can at this stage safely say that Provincial Governments are predominantly opposed to interviews being given in these circumstances; we may accept this view and communicate it to Provincial Governments.

3. I have separately reminded the outstanding Provinces.

I think it would be advisable to send an interim reply to Madras saying that all replies so far received to our telegram (except theirs) are opposed to the grant of interviews with legal advisers for the purpose of preparing representations and pointing out that we are advised that 11 (2) of the ordinance confers no kind of right to such interviews for that purpose.

R. Tottenham

7.3.44

1 Doc 187

2 Doc 176.

3 Doc 145

4 Doc 181

194:

Extract from Fortnightly Report from C.P. & Berar for the first half of March 1944

File No. 18/3/44 - Home Poll (I)

[NAI]

In connection with notices served on detenus under section 7 of Ordinance III of 1944, two papers in Nagpur, namely, the '*Hitavada*' and the '*Nagpur Times*' published summaries of the grounds of detention served on detenus in Jubbulpore Jail. Written warnings on this subject

had been conveyed about a week earlier to all editors in Nagpur, and, through District press Advisers, to the rest of the provincial Press. The provisions of section II of the Ordinance were also explained to the Provincial Press Advisory Committee at the end of last month. Prosecutions were, therefore, immediately launched against the Editors of the two papers and others who were concerned in publishing or disclosing the contents of the notices. The leakage was probably through a detenu who was released from the Jubalpure Jail. Evidence, on which a prosecution could be based against him was not, however, forthcoming. A number of representations have already been received in response to the notices. The tenor of several of them is that the grounds stated are not sufficiently precise, the August 1942 disturbance were the result of arrest of Congress leaders, and as Congress leaders and the detenus themselves were arrested almost immediately after the passing of the resolution no mass movement could have been initiated by them. One 'die-hard' refused to accept notice and replied that he is not interested in the grounds of this detention. Another said that as he cannot express himself properly in writing he should be heard in person. It is hoped to pass orders on the representations early next month by which time all those who wish to reply would have done so and orders would also have been passed on preliminary points which have been raised by some of the detenus.

195: Government of Bengal to the Government of India (access to legal advice)

File No. 44/32/44 – Home Poll (I)
[NAI]

Government Of Bengal
Home Department
Special Section.

Express Letter

From Bengal, Calcutta.

To Home, New Delhi.

No. 251HS

Dated the 8th March, 1944

Subject: Question of allowing security prisoners to interview legal advisers for framing representations in reply to communications under section 7 of the Restriction and Detention Ordinance,
Reference: Government of India, Home Department telegram No. 2196–Circular dated 26.2.44.

The proposal under reference appears to be open to serious objection on grounds of principle and expedience.

2. The question of legal advice can only arise in cases where a remedy at law is available. In view of section 10 of the Ordinance which expressly removes orders made thereunder

from the purview of Courts of law, no claim for legal advice in framing representations against such orders should in our view be recognised. The acceptance of such a claim would make it impossible to resist demands for legal advice in framing any other kind of representations or petitions in respect of any supposed grievance, claim or request which security prisoners may wish to address to Government.

3. The forms adopted by the Government of India and Provincial Governments (including Bengal) for the communication of the grounds of detention under section 7 of the Ordinance necessarily state the grounds in general terms without mentioning details of the information on which the allegations are based. A prisoner making a representation against such a communication can only admit or deny the allegations or make an attempt to explain them away. In no case can legal advice be considered necessary for the drafting. To make special arrangements for legal interviews for such purposes would, in view of the large numbers we have found it necessary to detain, merely add enormously to the strain of our already overstrained security organisation.

4. Though we shall continue, as hitherto, to give to security prisoners facilities for interviews with legal advisers for all reasonable purposes, we do not propose to make a specific rule to allow interviews with legal advisers for the purpose of framing representations under section 7 of the Ordinance.

S.B. Bapat
Deputy Secretary, Government of Bengal.
Home Department

1 Doc 170 (The actual date is 25.2.1944 - Ed.)

196: Government of India to the Government of Madras (access to legal advice)

File No. 44/32/44 - Home Poll (I)
[NAI]

Confidential
2637

Telegram R No. 2637

dated 8th March 1944.

From . . . Home Department, New Delhi.
To . . . Resonabili, Madras.

Express

Your telegram No. 38 dated 2nd March.¹ Replies so far received to our telegram No. 2196, dated 25th February show that remaining Provinces are opposed to grant of interviews with legal advisers for this purpose. We are further advised that section 11 (2) of ordinance III and proviso thereto confer no right to such interviews.

Secretary & Department (2)

197: Government of Assam to the Government of India (access to legal advice)

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
2169

Telegram R

From . . . Assam, Shillong,
To . . . Home Department, New Delhi.

No. 6644

Dated 7th (received 8th) March 1944
T.O.O. 1635
T.O.R. 1130

Your telegram 2196 of 26th February. We see no objection to allowing interviews with legal advisers for purpose stated subject to precautions.

Secretary Home & Department (2)

198: Government of Orissa to the Government of India (regarding access to legal advice for S.Ps)

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
2226

Telegram R

From . . . Orissa, Cuttack.
To . . . Home Department, New Delhi

No. 16-C

Dated (& received 9th) March 1944
T.O.O. 1840
T.O.R. 2300

Your telegram No. 2196¹ of February 26th. Provincial Government see no objection to grant of one interview with lawyer in each case for purpose of framing representation.

Secretary & Department

¹ Doc. 176 (dt 25.2.44).

199: Official Notings – Access to legal advice for S.Ps (dt 14.3.1944–20.3.1944) (extracts)

File No. 44/32/44 – Home Poll (I)

[NAI]

The sense of Provincial Governments' replies is clearly opposed to the granting of interviews for the purpose of framing representations under section 7 of Ordinance III and indeed the only ground on which it seems possible to defend such interviews at all is on the view, taken by Madras, C.P. (and Delhi) – but controverted by Legislative Department – that the proviso to section 11 (2) of the Ordinance conveys or implies a right to such interviews. Neither Assam nor Onssa, who express themselves mildly in favour of such interviews show any signs of having considered the question at all deeply or advanced any reasons for their views.

2. Our view, based both on the advice of Legislative Department (page 7 ante) and on the objection in principle pointed out by Provincial Governments of which the chief are

- (a) The opportunity for illicit communication and the danger of relaxation in security afforded by such interviews and
- (b) The fact that proceedings under section 7 of the Ordinance cannot be called legal proceedings in the full sense of the word and that the representation being framed regard to matters of fact and not of law, legal advice is not necessary,

must clearly be opposed to the granting of such interviews. It is for orders, however, whether we are to treat this as a matter of principle in which we ask Provinces to follow our lead, or whether we should leave it to their discretion, pointing out what we conceive to be the correct legal position and stating the reasons of policy for the view we propose to adopt. If the former course were adopted, we should not I think meet any considerable opposition from any Provincial Government, once the legal issue were cleared.

3. A further point arises from the two letters from security prisoners Arobindo and Dwijendra Bose submitted for orders on the linked files No. 44/8/44 – Poll (I) and 44/51/44 Poll (I).¹ In these letters, the security prisoners in question contend that Satish Chandra Bose, their father/uncle, is their legal adviser; they propose, therefore communicating to him by letter the grounds of their detention and seeking his advice. It seems clear enough that such an action attracts the proviso to section 11 (2) of the Ordinance and is not therefore legally barred. Since it is correspondence between a security prisoner and a near relative on what must, I think, be held to be a family matter, it is also permissible under the Security Prisoners Order. It seems to me that if our decision is against allowing interviews with legal advisers, we should equally oppose any such correspondence with legal advisers, but it is not very clear what formal grounds we can advance for this decision. Rule 13 (4) of the Central Government Security Prisoners Order gives discretion to withhold any communication likely to be detrimental to the public interest or safety and might be held to justify refusal to deliver these letters. As far as the principle is concerned, the objection at (a) above does not of course apply, but that at (b) does. This point also is for orders.

S.J.L. Olver
14.3.44

If one Province permits interviews with legal advisers, the position of those who don't wish become invidious & we should I think consider it a matter of principle and ask for uniformity.

2. Para 3 Mr Olvers' note, I think communicating with the lawyer, even though he may be the uncle or father should logically be disallowed – Rule 13 (4) will cover the case.

V. Sahay.

15.3.44.

Will H.M. please see the noting extracted at page 1 of the notes on this file and the Flag 'B' Summary of replies received to our p. 3/cor. telegram of February 25th.

I think we should decide not to allow interviews with legal advisers for the purpose of preparing representations under Ordinance No. III, so far as our own security prisoners are concerned. I think we should also inform Provincial Governments accordingly and ask those who have started the practice of allowing such interviews to discontinue it if possible. I have no doubt myself that the correct interpretation of the proviso to section 11 of Ordinance No. III is that given at 'A' in Under Secretary's note of the 29th of February.² This might be explained to Provincial Governments. I do not think that disclosure to near relatives by means of correspondence would be protected by the Security prisoners Order. The representation is a matter between the person detained and the executive authority that detained him. We have already urged Provincial Governments to enforce section 11 and, as H.M. is aware, the C.P. Government is already prosecuting the *Hitavada* for a breach of that section. I agree that the main object is to prevent publicity for these representations, but even if near relatives were allowed to see them, but not allowed to publish them, there would be the beginning of the trouble.

Applications from individual Central Security Prisoners which raise this point will be settled in the light of H.M.'s orders.

15.3.44.

(R. Tottenham)

Additional Secretary.

I agree generally with Additional Secretary. I think we should explain the legal position and dismiss the idea that the proviso was intended to create a right to interviews for purpose of these representations or to override the Security Prisoners order. But we cannot forbid provinces to allow such interviews since it rests with them to determine the manner in which representations shall be dealt with and considered. On the whole however it would be better if procedure everywhere follow the majority practice.

The Bihar procedures for interviews seems good and might be brought to notice.

Maxwell

20.3.44

1 Not printed – In this connection documents in Chapter XVI may be seen (10, 12 and 25).

2 Doc. 181. This refers to the last part of S.J. Olver's note of that date. – Ed.



200: Government of Central Provinces & Berar to the Government of India — Access to legal advice

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
2441

Telegram R

From . . . C.P. Nagpur.
To . . . Home Department, New Delhi

No. 580/3

Dated (and received 16th) March 1944

T.O.O. 2015

T.O.R. 2300

Immediate

Reference my telegram No. 259/353.3 dated March 7th¹ regarding legal interviews to security prisoners for the purpose of framing representations. We propose to allow unless Government of India see any objection.

Secretary & Department (2)

1 Doc 192

201: Government of India to the Government of CP & Berar

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
3065

Telegram R No. 3065

dated 18th March 1944

From . . . Home Department, New Delhi.
To . . . C.P. Nagpur.

Important

Your telegram No. 580/3, dated 16th March.¹ Letter conveying Central Government's views on general question of interviews with legal advisers for framing representations will be issued

shortly. Please await if possible. Most Provincial Governments are opposed to grant of such interviews.

Sir R. Tottenham (2)

1 200

202: Extracts from Fortnightly Report from Bihar for the first half of March 1944

File No. 18/3/44 – Home Poll (I)
[NAI]

It is reported from Darbhanga that the acquittal of Janki Raman Mishra^{*} by the High Court has caused a slight sensation since he is generally known to have led the attack on Laheriasarai when firing had to be resorted to.

203: Government of India to the Government of Bombay (final views of the government on access to legal advice for S.Ps)

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
3174

Telegram R No. 3174

dated 21st March 1944.

From . . . Home Department, New Delhi.
To . . . Bombay Special Bombay.

Express

Your telegram No. S.D.V./5919 dated 20th March.¹ Purpose of proviso to section 11 (2) of ordinance III was to allow security prisoner to show communication and representation under section 7 to legal adviser for preparation of case in e.g. *habeas corpus* proceedings though disclosure in court would remain barred. We are advised that proviso clearly creates no right to legal advice for framing representations nor overrides provisions of Security Prisoners Order regarding legal interviews. We deprecate grant of such interviews and this is the view held by great majority of provinces. While we cannot insist that no Province should allow such interviews, we consider uniformity desirable and should prefer majority practice of refusing these interviews to be followed throughout. We also consider correspondence between prisoners and legal advisers for this purpose should be prohibited.

2. Bihar practice which we commend is for Divisional Commissioner and Deputy Inspector General of Police to interview each detenu and assess his case.

Secretary & Department (2)

1 Not printed.

204: Government of India to all the provinces regarding access to legal advice for S.Ps

File No. 44/32/44 – Home Poll (I)
[NAI]

Confidential
3175

Telegram R No. 3175

dated 21st March 1944.

From . . . Home Department, New Delhi.

To . . . Chief Secretary, Madras/Bengal/the United Provinces/the Punjab/Bihar/
Central Provinces/Berar/Assam/ North-West Frontier Province/Orissa/Sind.

Express

Our telegram No. 2196 dated 25th February.¹ Purpose of proviso to section 11 (2) of Ordinance III was to allow security prisoner to show communication and representation under section 7 to legal adviser for preparation of case in e.g. *habeas corpus* proceedings though disclosure in court would remain barred. We are advised that proviso clearly creates no right to legal advice for framing representations nor overrides provisions of Security Prisoners Order regarding legal interviews. We deprecate grant of such interviews and this is the view held by great majority of provinces. While we cannot insist that no province should allow such interviews, we consider uniformity desirable and should prefer majority practice of refusing these interviews to be followed throughout. We also consider correspondence between security prisoners and legal advisers for this purpose should be prohibited.

2. Bihar practice which we commend is for Divisional Commissioner and Deputy Inspector General of Police to interview each detenu and asses his case.

Secretary & Department (2)

Doc. 176 (dt 25 2.44).



205: Government of Bihar to the Government of India (regarding petitions of security prisoners addressed to the High Court)

File No. 44/37/43 – Home Poll (I)
[NAI]

Bihar Secretariat.
Political Department.

D.O. No. 1885C

*Patna.
The 31st March 1944.*

My dear Tottenham,

Please refer to your D.O. letter No. 44/37/43 – Poll (I), dated the 4th March 1944¹ addressed to Godbole. Petitions addressed by security prisoners to the High Court are now forwarded to the High Court and if the petition is addressed to the High Court of another Province it is sent through the Government of that Province. As desired, we will henceforth send to the Government of India any petition addressed to them or to a member of the Government of India by the Central Government security prisoners, and will also send to the Government of India copies of petitions addressed to the High Court by the Central Government security prisoners.

Yours sincerely,
Signed
(illegible)

Sir Richard Tottenham, CSI, CIE, ICS,
Additional Secretary to the Government of India,
Home Department.

¹ Doc. 189.



206: Government of Madras to the Government of India (access to legal advice for S.Ps)

File No. 44/32/44 - Home Poll (I)
[NAI]

No. S/143 - 4/44.

Dated, 1st April 1944.

From
G.W. Priestley Esq., CIE, ICS,
Chief Secretary to the Government of Madras,
Fort St. George, Madras.

To
The Secretary to the Government of India,
Home Department, New Delhi.

Sir,
Security prisoners - Representation against grounds of detention - legal assistance - Home Department Serial No. 21. Telegram No. 3175, dated 22-3-1944.¹

In the telegram cited above the Government of India-

- (a) Point out that the proviso to section 11(2) of the Restriction and Detention Ordinance, 1944, was only intended to allow security prisoners to show any communication made to them under section 7 to their legal advisers for preparation of cases, for instance in *Habeas Corpus* proceedings,
- (b) Interpret the proviso as clearly creating no right to legal advice for framing representations and as not overriding the provisions of Security Prisoners Order regarding legal interviews,
- (c) Consider that following the practice adopted by the majority of Provinces interviews between the security prisoners and legal advisers should be prohibited, and
- (d) That correspondence between security prisoners and legal advisers should be prohibited.

2. It is observed that paragraph 11 (10) (b) of the Central Government Security Prisoners Order, 1944, allows a security prisoner to interview his legal adviser in connection with a legal proceeding to which he is, or will be, a party. The Government of Madras find it difficult to confine the meaning of the expression 'legal proceeding' to a proceeding taken in a regular court of law. Section 7 of the Restriction and Detention Ordinance, 1944, specifically gives a detenu the right to make a representation against the grounds of his detention and the authorities concerned are bound to afford him the earliest practical opportunity of doing so. The various proceedings under the Ordinance, which involve the liberties of the subject are evidently not purely of an administrative character. In the opinion of the Government of Madras, it would be a very narrow interpretation of the language to regard these as not being legal proceedings merely for the reason that the authorities by or before whom such proceedings are taken are not regular courts.

3. The proviso to section 11 (2) of the Restriction and Detention Ordinance, 1944 definitely contemplates and authorizes the disclosure by the person detained of the contents of the communication of grounds to his legal adviser. There is necessarily presupposes the availability of a legal adviser for advising on a matter in regard to which the grounds of detention are relevant. If the preparation of the representation is excluded from this category, it is difficult to imagine any proceedings to which the grounds of detention can be relevant, for an order of detention cannot be called in question in any court and all pending proceedings in which such an order is called in question are automatically discharged under section 10 (1) and (2) of the Ordinance.

4. The Government of India point out that the proviso refers to the preparation of a case in *Habeas Corpus* proceedings. The only such proceedings recognised by the law in this country are those under section 491 of the Code of Criminal Procedure and section 10 (1) of the Restriction and Detention Ordinance, 1944 specifically lays down that courts have no power to make any order under section 491 Criminal Procedure Code in respect of an order made, or having effect, under the Ordinance. The preparation of a case in *Habeas Corpus* proceedings in respect of an order of detention is thus rendered entirely futile by section 10 (1) of the Ordinance and it is difficult to believe anyone would take the trouble of preparing such a case. The Government of India's reference to the proviso to section 11 (2) as intended for *Habeas Corpus* proceedings appears therefore to be based on an erroneous interpretation.

5. In the circumstances stated in the foregoing paragraphs I am directed to say that the Government of Madras would prefer, so far at least as their own security prisoners are concerned, to adhere to the existing practice according to which under a formal order issued on the 10th February 1944 those prisoners are given all reasonable facilities of correspondence to obtain legal advice in making their representations and are allowed one interview with their legal advisers for the purpose.

Your obedient servant,

Chief Secretary.

1 See Doc. 204.

207: Official Notings — Case of undertrial prisoners (dt 1.4.1944–26.4.1944) (extracts)

Govt. of Madras Pub. (Gen.) Dept. 1943 G.O. No. 117
[T.N.A.]

Extract of orders in circulation on the case of undertrial prisoners connected with C.D.M. in Madura.

The execution of bonds may be omitted. It may be made clear to the individuals that if they do not behave themselves, they will be put in jail.

H.M.H. 1/4/44

From the D.M. Trichinopoly Re.D.I. 281/44 dated 11-4-43.

The D.M.'s recommendation to withdraw the prosecution of the 12 persons who have tendered apologies may perhaps be accepted. A draft memo. embodying the above orders is submitted for consideration.

Signed
20-4-44

This is the case of a Conference at which objectionable leaflets were distributed and resolutions passed approving of the A.I.C.C. resolution and condemning the 'beastly repressive policy' of the Government — please see p. 3 of.¹ It was on 12-9-43, long after the results of the C.D. Movement could be seen.

In the Os., there seems little room for this plea that the accused were misguided or misled. It is for orders whether this Department may recommend against withdrawal of the prosecution.

Signed
21/4/44

Twelve out of the total fourteen have apologized. I would accept the apologies. It will probably make the other two contemptuous of them.

22.4.44.
Signed

No, let the case go on. If they are imprisoned we will consider releasing them later. It looks to me to be a put up job and I am not prepared to create the impression that people can do what they like and then put in an apology and get off.

26.4.44

¹ Not printed — These are references to page numbers in the file concerned

208: Government of India to the Suptd of Police, Delhi (Krishna Nair's case)¹

File No. 22/61/44 — Home Poll (I)
[NAI]

D.O. No. 22/61/44 — Poll (I)

Government of India,
Home Department,

New Delhi.
3rd April, 1944.

Immediate

My dear Mellor,

This evening's telephone conversation. I enclose a copy of our letter No. 22/61/44 — Poll (I)

dated 27th March, 1944 and its enclosure.² Could you kindly let us have a reply *as early as possible tomorrow*.

Yours sincerely,

(S.J.L. Olver)

R.G. Mellor, Esq., I.P., M.B.E.,
Superintendent of Police, C.I.D.,
Delhi.

File No.
Serial No.

Enclosure

Department/Office

Letter

Draft Memorandum.

Telegram

No. 22/61/44 – Poll (I)

Dated 27.3.44.

C.C., Delhi.

Please supply so as to reach us not later than 2nd April, material for reply to enclosed copy of q.n.³ proposed to be asked by Sardar Mangal Singh – The Legn. Assembly re: Krishna Nair.

S.J.L. Olver.

1 See Docs 2, 5 & 6 in Chapter I - Sect. A.

2 Not printed – See Docs 212 and 214 for answers to the question asked by GOI

3 Not printed.



209: Government of India to the Government of Bihar (regarding the case Shibbani Lal vs King Emperor)

Govt. of Bihar Pol. (Spl) File No. 461/1944
[Bihar State Archives]

Government of India.
Home Department.

Express Letter

From
Home, New Delhi.

To
All Provincial Governments.

No. 44/90/43 - Poll (I)

New Delhi, the 3rd April 1944.

Our attention has been drawn to the judgment of the Sessions judge, Gorakhpur, United Provinces, in the case Shibban Lal vs. King Emperor holding that the United Provinces Government was not competent to make an order under Defence Rule 26 (1) (c) forbidding the appellant to '*enter or reside* in any district of the Gorakhpur and Benares Divisions.'

2. Without entering into detail, the decision of the Court may be described as based on the proposition that clause (c) of sub-rule (1) of Defence Rule 26, the wording of which must be strictly interpreted, provided power to prohibit a person from *being* in a certain or place but not from *entering* it.

3. Defence Rule 26 being in abeyance, all orders of externment will now be made under the corresponding clause (c) of sub-section (1) of section 3 of the Restriction and detention Ordinance (Ordinance III of 1944), while any existing orders under Defence Rule 26 (1) (c) remain valid by virtue of section 6 of the Ordinance. Clause (c) of sub-section (1) section 3 of the Ordinance repeats the exact wording of Defence Rule 26 (1) (c), however, and the argument reproduced above applies equally to externment orders made or validated under the Ordinance. We consider it important, therefore, that future orders of externment should follow closely the exact wording of the clause, that is to say, that they should prohibit the person concerned from '*being*' in the area of place in question. Such an order will, of course, be equally effective in preventing him from *entering* the area or place, since immediately he has entered it, he is in it and has, therefore, contravened the order. We consider further that the wording of any existing externment orders should be reviewed and that any orders vitiated, on the view taken in the judgment referred to above, should be replaced by fresh orders in the terms recommended.

(R. Tottenham)
Additional Secretary to the Government of India.

210: The Chief Commissioner, Delhi to the Government of India (Krishna Nair's case)

File No. 22/61/44 – Home Poll (I)
[NAI]

Express Letter

From
The Chief Commissioner,
Delhi.

To
The Government of India,
Home Department
New Delhi.

No. F.11/11/44-General.

Delhi, dated the 4th April 1944.

Reference Home Department Express Letter No. 22/61/44 – Poll (I) dated the 27th March 1944,¹ regarding Assembly Question' D.29 (Sardar Mangal Singh).

A draft reply is enclosed. Action is being taken to verify the classification ordered on the third conviction of the prisoner in question, and this information will be furnished as soon as it is obtained.

The prisoner has been transferred in the ordinary course to serve his sentences in a jail in the Punjab, but no information is available here to show in what particular jail he is at present detained or in which category he is actually being treated.

I will consider the question of classification further as soon as the full facts have been collected, but in the meantime the reply proposed to part (d) of the question appears appropriate.

(If it is correct that the second conviction has been set aside in the High Court, then the proper classification for the prisoner now would seem *prima facie* to be 'Civil Disobedience 1942' and it is probable that the jail authorities in the Punjab have already acted accordingly).

Superintendent of Police, C.I.D.
For Chief Commissioner, Delhi.

Encls. 1.
G.H.

Assembly Question 811 (Sardar Mangal Singh) Draft Reply

- (a) And (b). Since August 1942 the person named (Krishna Nair) has been convicted in three cases as follows:
- (i) By one of the Special Magistrates in Delhi, on the 4th December 1942, on a charge under Defence Rule 26(5B). Sentenced to two years rigorous imprisonment. Appeal

dismissed by the Sessions judge, Delhi, on the 3rd September 1943; appeal to the High Court at Lahore dismissed in March 1944.

Classified, at the time of this conviction, as a 'Civil Disobedience 1942' prisoner.

- (ii) On the 27th January 1943, by the same magistrate, on charges under sections 148/436 I.P.C. and Defence Rule 35. Sentenced to two years rigorous imprisonment. Appeal rejected by the Sessions judge on the 7th September 1943. A report has appeared in the press to the effect that an appeal against this conviction was accepted in the High Court at Lahore on the 11th March 1944, but no intimation to this effect has yet been received by the Courts in Delhi.

The offence being one involving violence, the convicted person was not given the 'Civil Disobedience 1942' classification but was ordered to be treated as a prisoner in the ordinary 'C' class.

- (iii) Convicted again on the 22nd April 1943 on a charge under section 52 of the Prisoners Act 1894 and sentenced to five years rigorous imprisonment.

It has not been possible, at short notice, to verify the classification made on this occasion, but it was probably 'C'.

- (c) Yes.
- (d) If the prisoner seeks to have his classification changed the relevant rules allow him to submit a revision application through the Superintendent of the jail in which he is confined to the local Administration.

Enclosure to Doc 208 – the enclosure to the letter 27.3.44 is not printed.

211: Official Notings (extracts dt 4.4.44) – (regarding Krishna Nair)

File No. 22/61/44 – Home Poll (I)
[NAI]

I spoke to Mr Mellor about this (Krishna Nair's) case yesterday. He said that they had not received our letter of 27-3-44 and a copy was therefore sent yesterday evening by hand to which he has promised us a reply today.

2. Meanwhile, I put up a draft reply based on the information given in serial No. 1 of file No. 3/32/43 – Poll (I) below, supplemented by what I was able to gather about the case from Mr Mellor on the telephone.

3. I understand that Krishna Nair was in fact convicted in the Gheora case (number (ii) of Mr Askwith's letter referred to above) in the lower court but finally acquitted on appeal or revision in the High Court. He is now apparently serving a sentence for contravention of one of the provisions of a restriction order to which he was subjected. In accordance with the Punjab orders an extract of which is at appendix to notes he is believed to be placed in the Special class reserved for persons convicted or detained in connection with the Congress movement.ⁱ

4. An alternative reply to parts (a) and (b) would be 'No' and 'Does not arise' but this would doubtless give rise to supplementaries and it may be desirable to give rather fuller reply drafted.

4.4.44.

(S.J.L. Olver)

Additional Secretary.

The reply is for approval. We have to accept the principle that Delhi prisoners confined in Punjab jails are governed by Punjab Jail rules.

R. Tottenham

4/4

Further information has been received from C.C., Delhi,² regarding the question for tomorrow about Krishna Nair. It appears that persons convicted of crimes of violence in connection with the Congress Rebellion (as Krishna Nair was in the railway station case) are placed in Class 'C'. Krishna Nair has recently, according to Press reports, been acquitted by the Lahore High Court on appeal in that case; but he is still serving a sentence for contravention or restriction order or something of that kind.

2. For such an offence he would apparently be entitled to Special class of treatment and has the right to appeal for such treatment. We have no information that he has been re classified, but that the Delhi authorities assume that this will be done if it has not already been done.

3. The answer to the different parts of the question I think (a), (b) and (d) might be —

'In accordance with the practice under the Punjab rules, Mr Krishna Nair, who was convicted of a crime of violence in connection with the August disturbances, was placed in Class "C". His conviction in that case is reported to have been upset on appeal, quite recently, but he is still serving a sentence for a less serious offence in respect of which he would be entitled to special class treatment. The question of his re-classification will certainly be considered, if it has not been revised already.'

4. The portion referring to his classification on a previous occasion will also require alteration. The information is that on that occasion he was placed in Class 'B'.

(R. Tottenham)

Additional Secretary 4.4.44

1 Appendix to notes not printed.

2 Doc. 210.



212: Question in CLA regarding Krishna Nair

File No. 22/61/44 – Home Poll (I)

[NAI]

Resolution
Final List
Admitted List.

Legislative Assembly

List No.

The Question, is down for meeting on the 5.4.1944.

811. Sardar Mangal Singh: Will the Honourable the Home Member please state.

- (a) Whether it is a fact that Mr Krishna Nair, a civil disobedience prisoner of 1942 from Delhi, is being treated as a non-political 'C' Class prisoner in the Lyallpur District Jail;
- (b) By whom his classification as a non-political 'C' Class prisoner was made; Whether it is a fact that during the last Satyagraha movement he was placed in the 'B' Class; and
- (d) Whether Government will reconsider his case and put him in a better class as a political prisoner?

Legislative Assembly

On. No. 811.

(To be answered on the 5th April 1944)

Reply to Sardar Mangal Singh's starred question No. 811 regarding Mr Krishna Nair.

The Honourable Sir John Thorne:

(a), (b) and (d). In accordance with the practice under the Punjab rules, Mr Krishnan Nair, who was convicted of a crime of violence in connection with the August disturbances, was placed in Class 'C'. His conviction in that case is reported to have been upset on appeal quite recently, but he is still serving a sentence for a less serious offence in respect of which he would under the Punjab rules be treated as 'special class.' The question of his re-classification will certainly be considered, if this has not already been effected.

(c). I believe this is correct.

1. See earlier Documents 208, 210 & 211.



213: Extracts from Fortnightly Report from Bihar for the second half of March 1944

File No. 18/3/44 – Home Poll (I)

[NAI]

The Japanese broadcasts have of course been making much of the invasion, and particularly Subhas Chandra Bose, who appeals to India for another rising like that of August 1942. The news of the invasion is reported to have been welcome among some of those detained in the jails of the province and among a section of the students. The calls for a repetition of the sabotage and arson of 1942 unfortunately coincide with a spate of acquittals and reduction of sentences in cases connected with the 1942 disturbances, which has had an encouraging effect on the subversive elements and a somewhat depressing effect on the police.

214: Extracts from Fortnightly Report from Bombay for the second half of March 1944

File No. 18/3/44 – Home Poll (I)

[NAI]

Government's defeat in the Central Assembly¹ in regard to Pandit Laxmikant Maitra's cut motion to censure the abuse of powers under the Defence of India Act and Rules was noticed by a few papers which adversely commented upon the official policy in the matter. The *Bombay Chronicle* wrote:

The Home Member failed miserably in his attempts to explain or condone them (i.e., instances of misuse). . . . The reviewing of cases by practically the very persons who had before approved of detention without trial is a worthless substitute for an examination by Independent advisory bodies. . . . But it is no use arguing with people who are constitutionally irresponsible.

The *Nutan Gujarat* observed:

The agony of the people has been expressed in the resolution and it has echoed the resentment not of the one or the other section of the people but of the whole of India. The enforcement of the Act has virtually set up an outright police-raj in the country. If Government fails to pay heed to the underlying meaning of the protest, then the present feeling of bitterness between the people and the Government will, without doubt, develop into a feeling of acute animosity.

¹ CIA debates – Vol. I, 1944
[NMMI].

215: Extracts from Fortnightly Report from Bombay for the second half of March 1944

File No. 18/3/44 – Home Poll (I)

[NAI]

Political: The work of reviewing detention orders under the Restriction and Detention Ordinance is now in progress. Sufficient time has elapsed for all those who wanted to reply to do so. The upper strata of Congress leaders who were arrested in the first few days of the movement as a preventive measure have so far maintained disdainful silence and it seems clear that they do not propose to make any representations. The very few who have bothered to reply have taken the familiar line that the All India Congress Committee resolution did not itself originate a movement, that a civil disobedience campaign was contingent on the failure of Mr Gandhi's approaches to the Viceroy and that it is a perversion of truth to say that the resolution tended to impede the successful prosecution of the war. Those security prisoners who are charged with having assisted underground organisations or taken part in sabotage activities have protested that the notices are very vague and have asked for particulars of offences which they are supposed to have committed; in the meanwhile they hotly deny the official charges. Experience upto now has unfortunately revealed that the Ordinance has achieved nothing which could not have been done just as well by merely executive instructions, and it is in fact clear that by raising hopes which have not been fulfilled the Ordinance has given rise to a feeling, among security prisoners and their friends, that it is something of a fraud dressed up in liberal language.

216: Government of Assam to the Government of India

File No. 44/32/44 – Home Poll (I)

[NAI]

Government of Assam

Home Department Confidential Branch

No C 66/43/122

dated Shillong the 5th April 1944

From

H.G. Dennehy, Esq., C.S.I., C.I.E., I.C.S.,
Chief Secretary to the Government of Assam

To

The Secretary to the Government of India, Home Department.

Reference: Your telegram No. 3175 of 23.3.44.¹

Sir,

With reference to paragraph 2 of the above telegram, I am directed to say it is considered

that the adoption of the Bihar practice in Assam would be unprofitable and extremely laborious, in present transport condition especially as there is only one Commissioner and one D.I.G. Police in this Province. Most of the detenus in Assam are in Jail because this Government cannot afford to take risks in view of the geographical situation of the Province.

I have the honour to be
Sir,
Your most obedient servant.

Dennehy
Chief Secretary to the Government of Assam,
Home Department.

Doc. 204.

217: Summary of replies from the provinces

File No. 44/32/44 – Home Poll (I)
[NAI]

Summary of replies to our telegram of 25-2-44.¹

Madras – Proviso to Section 11 (2) of Ordinance III implies that legal advice is permissible and is already being allowed, to those who desire it.

Bengal – Are opposed to permitting legal advice on grounds of principle and expediency and if legal advice arises only when a remedy at law is available (Section 10 of Ordinance III) and permission in such cases would set up a precedent for similar demands for legal advice in framing all sorts of representations. Communications may state the grounds of detention in general terms and a prisoner is only to admit, deny or explain them away and no legal advice is necessary. Number of prisoners being large such interviews would add to strain on security organisation.

U.P. – Opposed to any such interviews from security point of view and because replies would deal with questions of fact and no points of law are involved.

Punjab – Strongly opposed to granting interviews as legal advice in matter of fact is not necessary.

Bihar – Reasons for detention communicated are bald statements unsupported by evidence and replies are likely to be bald denials for which legal advice is not required. Divisional Commissioner and D.I.G. Police will be interviewing prisoners to hear their cases.

C.P. & Berar – Provincial Government are advised that proviso to section 11 (2) implies such interviews which may be allowed. Even otherwise Provincial Government considers interviews should be permitted on analogy of practice adopted in respect of *habeas corpus* application subjected to precautions.

Assam – No objection,

N.W.F.P. – No request for such interviews received nor do Provincial Government consider the concession necessary.

Orissa – Provincial Government see no objection to allowing one such interview in each case.

Sind – Have not permitted legal advice for this purpose and are opposed to such permission being granted.

1 Doc. 176.

218: Official Notings (extracts) (6.4.44–14.4.44) (legal advice question)

File No. 44/32/44 – Home Poll (I)

... I am still inclined to the view expressed in my note of 29-2-44¹ that the proviso to section 11 (2) of the Ordinance as drafted by Mr Bartley does represent a certain divergence from the views expressed by Additional Secretary and H.M. in their notes of 25/26-8-43². Although the explanation of the proviso given in our telegram of 21-3-44³ is not quite so stupid as Madras make out in para 4 of their letter,⁴ since they have failed to take into account the fact that *habeas corpus* proceedings can still be taken in respect of an order which the Court considers was not made in good faith under the Ordinance, it is nevertheless I think a somewhat strained interpretation. While agreeing that the proviso confers no right to any interview, I would suggest that it does raise a distinct presumption that Government's intention was to grant such interviews.

2. The only way that I can see of making the position absolutely clear would be to delete the proviso altogether. In view of the provision in sub-section (2) enabling the Central or provincial Government to authorize disclosure where necessary, I am doubtful whether the proviso serves any really useful purpose. The number of cases in which the proviso would be likely to operate is clearly very small and there would be no difficulty in the Government concerned giving ad hoc permission for disclosure in such cases. I would be inclined to recommend therefore that, along with the amendments under consideration in the linked file No. 44/23/44 – Poll (I), we should delete the proviso to section 11 (2) of the Ordinance

6.4.44
(S.J.L. Olver)

I disagree with the conclusions in para 1 of Mr Olver's note but agree that would be better to delete the proviso in question.

V. Sahay
6.4.44.

I think we should certainly disabuse the Madras Government of this idea — which seems to me to be clearly incorrect — that proceedings under Ordinance III are ‘Legal Proceedings’ without the meaning of that term as used in the security prisoners orders.

2. I also think that we should disabuse them of the idea that the specific intention of 491 CPC in 10 precludes *habeas Corpus* applications altogether — pointing out that old DR 26 read with Rule 16 of the D-Act had practically the same effect as Rule 10 and that nothing can prevent *habeas Corpus* applications in respect of orders alleged not to have been made, but only to have been made, under the ordinance.

3. Whether the proviso to Rule 11 is really necessary is a moot point — on which we should like to have the opinion of the Legal Department. I think we could get on without it — but I must say my inclination is to leave it as it stands.

R. Tottenham

7.4.44.

I have no doubt that the consideration by Government under section 8 or section 9 of the Ordinance of any representation that may be made by a security prisoner against his detention is not a legal proceeding within the meaning of clause 11 (10) (b) (quoted at A in FR. of the Central Government Security Prisoners Order. The expression ‘legal proceeding’ usually means a proceeding regulated or prescribed by law in which a judicial decision may or must be given; in other words, a proceeding in a court of justice where a party pursues a remedy which the law affords him — *Vide* the Law Lexicon of British India under ‘Legal Proceeding.’

2. I agree generally with the second paragraph of Sir R. Tottenham’s note. Since the Home Department consider that interviews with legal advisers should not be permitted for the purpose of preparing representations under the Ordinance and so far as other purposes are concerned disclosures to a legal adviser could be specially authorized by Government under section 11 (2) the proviso is not essential. It certainly gives a layman the erroneous impression that Government will permit the employment of a legal adviser for the purpose of preparing representations to Government and its deletion will no doubt be criticised on the ground that a valuable privilege conferred on the detenus in January last has subsequently been withdrawn. I think therefore that it will be expedient to leave it in for what it is worth.

K. Sundaram

Dy. Secy.

11.4.44.

On the ‘legal proceeding’ point the Madras Government are, in my judgment, clearly wrong, but I see no prospect of convincing them. If, therefore, Home Department desire to preclude the possibility of the relevant paragraph under the Security Prisoners Order being applied on the footing that action in accordance with sections 7–9 of the Ordinance involves a legal proceeding, they might, I suggest, amend the relevant paragraph by substituting e.g., ‘a proceeding in a court of law’ for ‘a legal proceeding.’

2. I cannot myself see any rational foundation for the impression referred to at A in Mr Sundaram’s note, though the correspondence shows that a number of ostensibly intelligent people have in fact derived that impression.

3. With reference to paragraph 2 of Sir Richard Tottenham’s note, Press reports of sundry cases decided since the commencement of Ordinance III indicate that High Court have in fact regarded section 10 of the Ordinance as effective to applications under section 491 of the

Code in a manner in which section 10 of the Defence of India Rules was not so effective, and the point made by Sir Richard Tottenham should not, I suggest, be stressed. For the purposes of the present controversy nothing turns on the appositeness of the Home Department reference to *habeas corpus* applications, which was in term purely illustrative.

4. I think that the omission of the proviso to sub-section (2) of section 11 is to be deprecated not only on publicity grounds but also on the merits. It is inherently right that sub-section (2) of section 11 should not hit disclosures by a detenu to his legal adviser and the detenu should not be placed under the necessity of obtaining a previous authorization to make such disclosures.

G.H. Spence
Secy
12.4.44.

I think it might be worth making the amendment suggested by Sir George Spence in our Security Prisoners Order and if agreed I will take this up separately. I put up a draft reply to Madras based on this assumption.

13.4.44
(S.J.L. Oliver)

V. Sahav
14-4-44

May issue. I suppose other Provincial Governments will be informed of our amendment to our S.P.'s order, when we make it.

R. Tottenham
14.4.44

- 1 Doc 181
2 Doc 79
3 Doc. 204.
4 Doc. 206
5 Not printed - See final letter to Madras - Doc. 220

219: Official Noting on the letter from Assam (dt 12.4.1944)

File No. 44/32/44 - Home Poll (I)
[NAI]

Notes in the Home Department

Sr. No. 26 (Receipt)

Dy. No. 2345/44 - Poll (I)

(Our File No. 44/32/44 - Poll (I) on this subject is at present in legislative Department).

2. We only commended the Bihar practice to other Provincial Governments and if Assam

cannot follow it, it does not matter much. Each case will, it may be hoped, be scrutinized by the Minister in charge and the Governor and that is sufficient to satisfy the requirements of the Ordinance.

S.J.L. Olver
12.4.44.

1 Doc. 216.

220: Government of India to the Government of Madras (access to legal advice)

File No. 44/32/44 – Home Poll (I)
[NAI]

Government of India
Home Department.

Express Letter

From
Home, New Delhi.

To
The Chief Secretary to the
Government of Madras, Madras.

No. 44/32/44 – Poll (I):

New Delhi, the 15th April 1944.

Your letter No. S/143–4/44, dated 1st April, 1944, regarding legal assistance for security prisoners in the preparation of representations under section 7 of Ordinance No. III of 1944.¹

2. We do not accept your view that proceedings under section 7 of the Restriction and Detention Ordinance constitute 'Legal proceeding.' It seems to us sufficiently clear that this term must be held to refer to a proceeding regulated or prescribed by law in which a judicial decision may or must be given, and, of course no question of a judicial decision arises under section 7. In order to set the matter beyond doubt, we propose amending the relevant provision of the Central Government Security Prisoners Order, 1944, and to substitute for the term 'legal proceeding' in paragraph 11 (10) (b) of the Order the phrase 'proceeding in a court of law.'

3. Our object in drafting the proviso to section 11 (2) of the Ordinance was to provide that, in any legal proceedings of the nature described in the proceeding paragraph where security prisoner took legal advice, discussion between the security prisoner and his legal adviser of any communication received or representation made by him under section 7 of the Ordinance should not be precluded. An illustration of the possible nature of such proceedings was given in the reference in our telegram of March 22nd to 'habeas corpus' proceedings, and we would observe that despite the provisions of section 10 of the Ordinance to which you draw attention the courts may still hold that they are competent to entertain habeas corpus

proceedings in certain circumstances, for example, when it is alleged that the order of detention only purported to have been made under the Ordinance and was not in fact so made.

4. As already stated in our telegram of March 22nd this is not a question on which we can insist on absolute uniformity in all Provinces. We still consider however that such uniformity would be desirable.

(R. Tottenham)
Additional Secretary to the Government of India

1 Doc. 206

221: Official Notings on Baldev Mitters' case¹ (dt 17.4.1944-4.5.1944) (extracts)

File No. 259/44 - Home Poll (I)
[NAI]

Defence Department

We do not remember to have heard about this Patna² High Court decision and would like to know more about it from Home Department if they have heard anything. Three copies of the Calcutta Judgment may be sent to Solicitor with the draft endorsement put up

After issue Home Department may see.
15.4.44.

S.R. Kaiwar, 17.4.44

Home Department

D.D. u/o No. 3445-DC/44 dated 21.4.44.

Notes in the Home Department

D.D. have seen the Legislative Department papers about an appeal in this case in the Federal Court. Their u/o No. 3813-DC/44, dated 26.4.44, refers. In another case³ according to press reports, the Chief Justice of the Lahore High Court has also held that he had no jurisdiction to interfere with the orders of detention in view of the provisions of Ordinance III of 1944.

V. Sahay, 25.4.44

B.R.A., 1.5.44.

A.J., 1.5.44.

Defence Department.

H.D. u/o No. 3676/44 - Poll (I), dated 2.5.44.

Legislative Department might also be interested in the Lahore High Court judgment reported in the Hindustan Times of 26th and 28th April.

4.5.44

1 and 3 Doc. 168

2. Docs 142 & 143.

222. Extracts from Fortnightly Report from Orissa for the second half of April 1944

File No. 18/4/44 – Home Poll (I)
[NAI]

A number of Security prisoners have already been released and a number of notices, communicating the grounds of detention, have been sent to those still under detention whose cases are to come up before the Committee which has been appointed by the Provincial Government to advise on their cases. Reports received indicate the majority of the Security prisoners will not reply. One lady, the wife of Naba Krishna Chowdhury, an advanced Congress Socialist, acknowledged receipt of the notice served on her with thanks for a 'piece of fine English literature.'

223 Order of the Government of India amending the security prisoners order

File No. 44/32/44 – Home Poll (I)
[NAI]

No. 44/91/44 – Poll (I)
Government of India,
Home Department.

New Delhi, the 21st April 1944.

Order

In exercise of the powers conferred by sub-section (4) and (5) of section 3 of the Restriction and Detention Ordinance 1944 (Ordinance No. III of 1944), the Central Government is pleased to direct that the following amendment shall be made in the Central Government Security Prisoners Order, 1944, namely:

In clause (b) of sub-paragraph (10) of paragraph 11 of the said Order, for the words 'with a legal proceeding' the words 'with a proceeding in a court of law' shall be substituted.

(Vishnu Sahay)

Deputy Secretary to the Government of India.

N:22(21.4.44)-D.



224: Keshav Gokhale v. Emperor [Stone C.J., Kania, Wadia, Divatia and Chagla J.J. Full Bench (21 April 1944)]

AIR, Vol. 32, 1945, Bombay, p. 212

Criminal application No. 585 of 1943, decided on 21st April 1944.

R.A. Jahagirdar, K.J. Kale and D.M. Atharale – for Application. N.P. Engineer, Advocate General and B.G. Rao, Government pleader – for the Crown.

Stone C.J. – We are unanimous in our opinions on the various judgment, I am about to deliver is the judgment of this full bench. We have before us two petitions under S.491, Criminal P.C., 1898 of Mr Keshav Govind Gokhale, who has been brought up from Belgaum Central prison where he is under detention. From these petitions which are duly affirmed it appears that Mr Gokhale is a pleader practising in the Courts of the District of Belgaum and is also a Member of the Bombay Legislative Assembly. The following further facts, some of which appear in Mr Gokhale's petitions, are not in dispute: (1) That the arrest was made under R. 129, Defence of India Rules, by a Sub-Inspector of Police at Nippani which is 44 miles from Belgaum at 3 o'clock in the afternoon of 9th August 1942. (2) That Mr Gokhale was on the day following conveyed to Belgaum Central Prison, where he was detained until the middle of March 1943, being then transferred to Naik Road Central Prison, and subsequently, retransferred to Belgaum Central prison, from when he has been produced before us pursuant to an order of this Court. (3) That the document, by virtue of which Mr Gokhale is detained, was signed by Mr C.N. Millard, District Magistrate of Belgaum, on 9th August 1942, in point of time before the actual arrest. (4) That on the same day as Mr Gokhale was arrested Mr Millard issued a document or documents which led to the detention of about thirty other persons. (5) That as a result of reading an account in the newspapers of a decision of the Federal Court, Mr Gokhale applied on 2nd September 1943, to the District Magistrate at Belgaum for a copy of the order under which he was detained. That he was not supplied with any copy until 7th November 1943.

Before parting with facts, we desire to state that every person under detention has a right to know the terms of the order under which he is detained, and that the delay in complying with Mr Gokhale's request remains unexplained and is regrettable.

By sub-rule (1) of Rule 129, Defence of India Rules, 1939, any police officer, or any other officer of Government empowered in that behalf by general or special order of the Central Government, or of the Provincial Government, may arrest without warrant any person whom he reasonably suspects of having acted, of acting, or of being about to act in amongst other ways 'with intent to assist any state at War with His Majesty, or in a manner prejudicial to the public safety or to the efficient prosecution of War'. By sub-rule (2) of R.129 it is provided that officer who makes an arrest under sub-rule (1) shall forthwith report the fact of such arrest to the Provincial Government and may commit the person so arrested to custody: Provided that no person shall be detained in custody under this sub-rule for a period exceeding fifteen days without the order of the Provincial Government, and that no person shall be detained in custody under this sub-rule for a period exceeding two months.

The relevant portions of R.26, as it stood on 9th August 1942, were as follows:

(1) The Central Government or the Provincial Government, if it is satisfied with respect to any particular person that with a view to preventing him from acting in any manner prejudicial to the defence of British India the public safety, the maintenance of public order, His Majesty's relations with foreign prisoners or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war it is necessary so to do, may make an order

(b) Directing that he be detained.

Sub-rule (5) provides that so long as there is in force in respect of any person such an order directing detention, the person detained shall be liable to be detained in such place and under such conditions as the Central Government or the Provincial Government may from time to time determine.

Under section 2 (5), Defence of India Act, 1939, the Provincial Government has the power to delegate its powers and duties. And on 19th December 1941, the Government of Bombay by a Notification in the Bombay Government Gazette made the following order:

No. S.D./W.3401 — In exercise of the powers conferred by sub-section (5) of S.2, Defence of India Act, 1939 (25 of 1939), the Government of Bombay is pleased to direct that the powers or duties conferred or imposed on it by such of the rules of the Defence of India Rules as are mentioned the schedule annexed hereto shall also be exercisable or dischargeable by all District Magistrates within the hand of their respective jurisdiction.

The schedule contains amongst other rules, R.26 and R.129.

On 7th August 1942, that is to say, two days before Mr Gokhale's arrest, by a further Notification being No. S.D.V./30 in the Bombay Government Gazette in similar terms to the format it was provided that the powers conferred by Rule 26 (5) of the Defence of India Rules 'shall also be exercised by all District Magistrates within the Province of Bombay.' In fact R. 26 was subsequently held by the Federal Court in A.I.R. 1943 F.C.1 to be ultra vires; and two Ordinances, to which we will presently refer, were issued by the Governor — General for the purpose of curing by retrospective operation validity. The document, under which Mr Gokhale has been detained since his arrest on 9th August 1942, is in the following terms:

No. M.C. 62.

Order

Whereas the Government of Bombay has, by Notification in the Home Department (Political), No. S.D./W. 3401, dated 19th December 1941, and No. S.D.V/30, dated 7th August 1942, directed that the powers conferred on it by R. 26 of the Defence of India Rules shall also be exercisable by the District Magistrates;

And whereas I, C.N. Millard, District Magistrate of Belgaum, am satisfied with respect of the persons named in the first-column of the Schedule hereto annexed that with a view to presenting them from acting in a manner prejudicial to the Defence of British India, the public safety, the maintenance of public order and the efficient prosecution of the war, it is necessary to make the following order;

Now, therefore, in exercise of the powers conferred by R. 26 of the said Rules, I do hereby direct that the said persons be detained until further orders in the Belgaum Central prison.

I do hereby further direct that the said persons shall, for purpose of the security prisoners

detention Conditions order, 1941, be classified as indicated against their name in the second column of the said schedule.

Classification.

1

Signed illegible,
District Magistrate,
Belgaum

Name of person,
K.G. Gokhale of Belgaum.
Initials.
(Illegible)
Dated at Belgaum, this 9th
day of August 1942.
(Impress of rubber stamp)
District Magistrate, Belgaum.

An examination of the original of this document shows that it consists of a form, produced by cyclostyled process, on which has been typed in the left hand column of the Schedule 'K.G. Gokhale of Belgaum', and in the right hand column the figure '1'. The date has been filled in by typing '9th' and the word 'August.' The signature in ink, which though illegible, is admitted to be that of Mr Millard. The only other alterations to the original form are the impress of a rubber stamp of the District Magistrate, Belgaum, and the initials, which are in ink of a clerk under the signature and against the words 'District Magistrate, Belgaum.' It is obvious that the document, as signed, is inappropriate to the case of a single person, since it reads that Mr Millard is satisfied with respect to 'the persons named in the first column of the Schedule', and it continues at four other different places as if it was dealing with a plurality of persons. The reasons contained in the body of it, except those relating to Native states and tribal areas, are copied from 26 (1) of the Defence of India Rules as that sub-rule stood on 9th August 1942.

Although the form was cyclostyled by the morning of 9th August it refers to the Notification of the Government of Bombay dated 7th August. That Notification confers powers on officers under Rule 26 (5) to detain persons arrested beyond the limits of their territorial jurisdiction. A reference to that Notification and such powers was not necessary in this document, as it is not suggested that Mr Gokhale was to be detained beyond the jurisdiction of Mr Millard although arrested under Mr Millard's order within the Belgaum District. *Ex facie*, in our judgment, this document raises the inference that it was signed as a matter of mechanical routine. If it is to be assumed, and we do in fact assume, that Mr Millard is a responsible and conscientious officer, it is not possible to believe that he appreciated the necessity for applying his mind to this document. Since he had done so, he could not have failed to correct its manifest inappropriateness. In our judgment, it is impossible to believe that in signing this document he appreciated the nature, the extent and the implications of the grave and onerous powers and duties delegated to him by Government for the purpose of curtailing by preventive detention the liberty of His Majesty's subjects without trial or process of the Courts. The fact that there may have been serious disturbances at the time or that such disturbances may have been anticipated and that Mr Millard signed many such

documents on the same day can hardly be craved in aid as an explanation, since R. 129 itself demonstratively foresaw such a state of affairs when it provided a period of fifteen days in which orders for detention under R. 26 could have been considered and made in respect of persons arrested under it. The greater the emergencies and the disturbances of the moment, the more the reason to take advantage of the latitude given by the regulations unless the signing of a document such as the one before us was regarded as a mere formality. Contrast, as appears from his affidavit, the careful and meticulous investigations of Sir John Anderson as Home Secretary before authorizing the detention of one Benjamin Greene under similar Regulations in England of whom the Home Secretary had reasonable cause to believe to be of hostile origin or association or to have been recently concerned with acts prejudicial to the public safety or the defence of the realm. . . .

In our opinion, all the circumstances in the case before us show that Mr Millard did not exercise any executive discretion or make a quasi-judicial consideration of the facts pertinent to Mr Gokhale's case. The Advocate-General was constrained to admit that, if one of the cyclostyled forms had been filled up with a wrong name by a dishonest clerk, and signed by the District Magistrate without noticing the defect, it would be no order. On the view we take of the matter, namely, that Mr Millard never applied his mind when he signed this document to any consideration of the matters which the powers conferred and the duties imposed upon him compelled him to consider; it has no more efficacious result.

In A.I.R. 1943 F.C. 1 — the learned Chief Justice of India, Sir Maurice Gwyer,¹ in considering whether the order was protected from examination by S. 16 (1), Defence of India Act, which provides; 'no order made in exercise of any power conferred by or under this Act shall be called in question in any Court', said as follows (p. 9).

We are clearly of opinion that there the order is made under or by virtue of a rule which is in valid and therefore of no force or effect. The order is a nullity and S 16 (1) has no application.

The document in the case before us is in no better position for, in our judgment, it is no order at all since the obligation to consider reasons or grounds for making the order and to be satisfied upon material laid before the officer or authority making it or within his cognizance is a condition precedent to the making of an order. In (1942) I.K.P. 87 Mackinnon L.J. said this (p. 108).

The power of the Home secretary to issue a valid order depends on the fulfillment of a condition. The nature of that condition is very material. It is not the existence of an objective fact, for example, that the person concerned is an alien. It is the existence, of a subjective state of mind in the Home Secretary, that is, that he has reasonable grounds for believing certain facts, to exist, and, by implication, that he honestly entertains that belief. If an order asserting the existence of that state of mind and belief, in valid from, has been made, the onus on the application of disproving its existence is obviously more difficult than would be the disproof on an objective fact, for example, that the man is an alien. Evidence of the applican that he does not know that there are any reasons for the Home Secretary's belief, or denial that there are or can be any reasons for it, is not a sufficient discharge of the onus so as to call on the Home Secretary to explain and justify the assertion of his order. In the present case the appellant does rather more than make those general assertions or denials, and an affidavit in reply has been filed by the Home Secretary.

¹This passage was referred to with approval by Lord Wright in the House of Lords: (See (1942) A.C. 206 at p. 262) Mr Jahagirdar has further contended that the order made by Mr Millard is *ultra vires* and invalid because on the true construction of the relevant section

it should be the Central Government or the Provincial Government, and not the District Magistrate, who has to be satisfied on the points mentioned in Rule 26 (1): but having regard to our conclusion already stated it is not necessary to go into this question. As a result of the case in A.I.R. 1943 F.C.1 there was issued Ordinance 14 of 1943, which, in effect, is aimed at curing the effect arising from the divergence of language between R. 26 and S. 2 (2) (x), Defence of India Act, 1939. This was followed by Ordinance 3 of 1944, which came into operation on 15th January 1944, and it is upon its terms that the Advocate-General relies. Section 3 of the 1944 Ordinance gives power to make orders restricting the movements or actions of detaining certain persons as therein mentioned. Section 5 provides for the delegation of the powers and duties of the Central and Provincial Governments to other authorities and to officers: But it is Ss. 6 and 10 upon which the Advocate-General relies: They are as follows.

6 (1) Validation of orders made under Rule 26, Defence of India Rules. (1) No order made before the commencement of this Ordinance under Rule 26, Defence of India Rules shall after such commencement, be deemed to be invalid or be called in question on the ground merely that the said rule purported to confer in excess of the powers that might at the time the said order was made be legally conferred by a rule made under section 2, Defence of India Ordinance, 1939 (5 of 1939), or under Section 2, Defence of India Act, 1939 (35 of 1939).

'(2) Every such order shall on the commencement of this Ordinance be deemed to have been, and shall have effect as if it had been, made under this Ordinance, and as if this Ordinance had been in force at the time the order was made.'

The rest of the section is not material . . .

Whilst, therefore, we proceed on the assumption that the 1944 Ordinance is valid, we desire to make it plain that we are deciding nothing with regard to its validity or its invalidity. The argument of the Advocate-General amounts to this: That the document signed by Mr Millard on 9th August 1942, is an order, and as it purports to have been made under R. 26, it follows that by virtue of S. 6 (2) of the 1944 Ordinance, it is valid, whatever its defects may be. In our opinion, this submission is fallacious. The effect of S. 6 (1) is to validate orders made under R.26 which would otherwise have been invalid on the ground merely that the said powers that might at the time the said order was made be legally conferred by a rule made under the Defence of India Ordinance, 1939, or under S. 2, Defence of India Act, 1939. That is to say, it cured the defect in the divergence of language between the rule on the one hand and the Ordinance and the Act on the other. It is every such order which under section 6 (2) is to be deemed to have been, and which shall have effect as if had been, made under the 1944 Ordinance, and as if such Ordinance had been in force at the relevant date.

In our judgment, section 6 (2) of the 1944 Ordinance does not validate a document which is not order at all, even though it bears the signature of a duly authorized officer, if it can be shown that the officer never applied his mind when he affixed his signature to it. And be it observed that it is only orders made valid by section 6 (1) to which section 6 (2) applies and is limited. It was contended that section 6 (1) of the 1944 Ordinance was separately framed to continue the operation of S. 3 of ordinance 14 of 1943 which had been held valid by the Federal Court. That, however, does not mean that by section 6 (2) of the 1944 Ordinance all orders purported to be made under R. 26 were validated. It is significant to note the word 'such' used in section 6 (2) in this connection. In our opinion, if it could be shown that an order is invalid on a ground other than the invalidity of R.26, section 6 (1) of the 1944 Ordinance does not apply and cannot validate such an order. Only orders valid except for

the defect mentioned in section 6 (1) are covered by section 6 (2). We find that this line of reasoning was advocated in A.I.R. 1944 Lah. 142.² The Court held that the case fell under S. 6 (1), and, therefore, it was covered by section 6 (2). The Court did not, however, reject the contention advocated and seems to have impliedly approved of it.

The first part of section 10 (1), which suspends the jurisdiction of the Court to call in question orders to which it applies, does not help the Advocate-General. There was a similar provision in S.16, Defence of India Act, and the Federal Court has enquired into and decided questions of validity of orders passed under R.26 on the ground of the same being ultra vires. The second part of section 10 (1), which suspends the operation of S. 491, Criminal P.C., to such orders, applies to two classes of orders. That is to say, orders made under S. 3 of the Ordinance itself and orders 'having effect under this Ordinance or in respect of any person the subject of such an order.' In our judgment for the reasons already stated, the document we have to consider does not fall within any of these categories.

Section 10 (2) does not assist the matter: Since, though these *habeas corpus* proceedings were pending at the time of the commencement of the 1944 Ordinance, they are not proceedings by which the validity of an order having effect by virtue of S. 6, as if it had been made under the Ordinance, is called in question. In the result, no order under R. 26 of the Defence of India Rules has ever been made in the case of Mr Gokhale; and at any rate, from the expiration of the period mentioned in R. 129 his detention has been unlawful. In these circumstances, it is our clear duty to order his immediate release from custody; and that order we now make.

Per Curiam. — It is necessary to add that an application has been made to us by the learned Advocate-General for a certificate under S. 205 Government of India Act. We have carefully considered the matter and withhold the granting of any such certificate. We are helped in coming to the conclusion by a reference to the case in 43 Bom. L.R. 496, which is a decision of a full Bench of this Court. In case of an appeal to the Privy Council, we direct that the original order of detention issued on 9th August 1942, by Mr Millard, which should be marked 'Exhibit 1', should be forwarded to the Privy Council in Original.

Order accordingly.

R.K.

¹ Doc. 27 (Talpade's case).

² Doc. 168 (Baldev Mitter Bijli's case).

225: Report in *The Hindustan Times* on Gokhale's case and Official Note on it — (dt 22.4.1944)

File No. 25/10/44 – Home Poll (I)

[NAI]

A full Bench of the Bombay High Court has held in the case of political detenu. Mr Gokhale, that the District Magistrate who passed the order did not exercise any executive discretion or make a quasi-judicial consideration of the facts pertinent to the case.¹ Mr Gokhale, who is a pleader and a member of the Bombay Assembly, was suddenly arrested in August, 1942, and

detained under the Defence of India Rules. Thanks to the intervention of the High Court, which heard and accepted a *habeas corpus* petition filed on his behalf, Mr Gokhale has now been ordered to be released. His release may or may not be effected, but the observations made by the High Court in the course of its judgment holding the detention order invalid are important now from more than one point of view. For one thing, they call attention again to a sinister aspect of the Government's detention policy which despite the strictures of High Courts and the Federal Court appears to continue unchanged. In this case the Chief justice observed that every person under detention had to know the terms of the order under which he was detained and that the delay in furnishing the petitioner with a copy thereof remained 'unexplained and was regrettable.' It has further been disclosed in this case that the order as furnished consisted merely of a cyclostyled form in which the name of the petitioner alone was typed though the body of the order referred to several other persons. The Chief Justice rightly came to the conclusion that it was signed as a matter of mechanical routine and that it was not possible to believe that in signing this document the District Magistrate 'appreciated the nature, the extent and the implications of the grave and onerous powers and duties delegated to him by Government for the purpose of curtailing by preventive detention the liberty of His Majesty's subjects without trial or process of the courts.' It is only in rare cases that High Courts are in a position to interfere, but one would like to know from the Government of India what they are doing to ascertain similar lapses elsewhere and save innocent persons from unjustified detention.

Official Comment on the Above

We had better obtain information about the case quoted in the cutting above from the *Hindustan Times* of 22/4.

2. We have I believe told one Government (the Punjab) that a copy of the order of detention must be supplied to detenus. Have we done so in respect of *all* our detenus – Sarat C Bose' in his recent representation said he had never been supplied a copy, though he had asked for it. In replying to his representation, we might supply him a copy of the order, if his statement that one was not given to him is correct.

V. Sahay
22/4

1 Doc. 224

226: Report in *The Hindustan Times* on the Lahore High Court Judgement

File No. 25/9/44 – Home Poll (I)
[NAI]

The Hindustan Times, Wednesday, April 26, 1944.

***Habeas Corpus* Petition Dismissed**

Lahore, April 25. – Sir Trevor Harries, Chief Justice of the Lahore High Court, dismissed

today the *habeas corpus* petition against the detention of Prof. Inder Prakash, Assistant Secretary of the Marwari Chamber of Commerce, Calcutta.

The Assistant Advocate-General produced an affidavit by the Chief Secretary to the Government to the effect that the detention was under Ordinance III of 1944 and, therefore, it could not be challenged. — A.P.I.

227: Official Notings regarding four appeals to the Federal Court (dt 25.4.1944–26.4.1944)

File No. 25/7/44 – Home Poll (I)
[NAI]

These are four notices served by the Federal Court on the Advocate-General of India under 036 R.1 of the Federal Court Rules.¹ The notices relate to four appeals from decisions of the Patna High Court which involve the validity of Ordinance III of 1944 (the Restriction and Detention Ordinance 1944). The notices, petitions of appeal, judgments of the High Court and connected documents are placed on the file.²

2. As the validity of Ordinance III of 1944 is challenged on various grounds it appears advisable that the Advocate General of India should be instructed to appear in the case on behalf of the Central Government.

3. Instructions of the Department are sought on this point. It may be stated that if the Department decides in favour of the course suggested above they will have to pay the fees of the Junior Counsel which will come to, about Rs 400 per day, the services of the Advocate General of India being available to the Department free.

4. If it is decided that the Central Government should be represented at the hearing, observations to be submitted to the Advocate General will be prepared in this office and sent to the Department for their comments.

5. The appeals are fixed for hearing on the 15th May 1944. In the first of the cases, however the appellant (Basant Chandra Ghose)³ has made an application (copy is placed on the file)⁴ asking the Court to permit him to appear in person and conduct his case personally. In the third paragraph of the notice of the Federal Court in this case (i.e. F.C. Case No. III of 1944) it is stated that the Federal Court proposes to allow the application and that if it is intended to raise objection to the appellant's going to Delhi to appear in person such objection should be intimated to the Court by the 30th April 1944.

6. It is understood that a similar notice is issued to the Provincial Government. It is not known what attitude the Bihar Government is taking on the point. Instructions of the Department are urgently sought as to whether the application is to be opposed and if so on what grounds. The Home Department will probably have to be consulted on this point. A form of Power of attorney in this case is placed on the file for the signature of the Secretary, Defence Department. The will be necessary if the Central Government approve in these cases.

7. In view of the urgency of the case the file is marked 'Immediate.'

K.Y. Bhandarkar
25.4.44.

Defence Department (Mr Kaiwar)

Home Department who are administratively concerned with Ordinance No. III of 1944 may see and consider the points raised in the above note. The form of Power of Attorney below is for signature of the Home Secretary.⁵

S.R. Kaiwar
Deputy Secretary
Tel. No. 3270., 26.4 44

1. Refer to Docs 142, 143, 189, 209.
2. Not Printed.
3. Docs 233 & 234.
4. Not printed.
5. Not printed.

228: Opinion of Advocate General (Bengal) about reading of the Independence Day Pledge¹

Govt. of Bengal (Home) File No. 6/44
[Bengal State Archives]

Action for reading out the independence pledge can be taken either:

- (a) Under the General criminal law or under the Calcutta Municipal Act.
- (b) It seems that the Government has been advised that the Independence pledge is seditious. I only desire to draw the attention of the Government to the observations in Niharendu's case in 1942 F.C.R. at page 48 as follows:

Hence many judicial decisions in particular cases which were no doubt correct at the time when they were given may well be inapplicable to the circumstances of today

The present state of political movement, in other words, the circumstances of today would appear from the Oxford University Press publication 'Indian politics 1936-42' by Coupland at pages 273-5. The court in coming to a conclusion would have to consider the circumstances of today.

- (c) The Councillor in reading out the Independence pledge is not disowning allegiance but hopes that in the course of time India will sever the British connection. He suggests that end should be achieved by non-violent constitutional method thus bringing himself within the protection of the explanation of that section. In view of the present state of political movement as indicated by Sir Stafford Cripps and the explanation, I do not think there has been a violation of the oath of allegiance taken in terms of S.38.

Assuming however that the reading of the independence pledge did amount to a violation of the oath taken then the only action the Government could take would be to unseat the mover under S. 41. Presumably the oath was taken sometime in 1941 when the Corporation was constituted. Violation of the oath was on the 29th January, 1944. Sometime in March

1944 the Corporation was dissolved and the seat automatically became vacant. Action under S. 41 therefore cannot be taken. New councillors would take fresh oaths and I do not think they could be unseated under S. 41 for violation of an oath previously taken.

(S.M. Bose)

2.5.44.

(Waight)

3.5.44.

Send copy of Advocate General's opinion to the Department and say that in the circumstances it is not proposed to take any further action in the matter.

Additional Secretary

Home Political.

1 See Docs 147, 148 & 167.

229: Political agitation in Trichinopoly district

Govt. of Madras Pub. (Gen.) Dept. 1944 – File G.O. No. 117
[T.N.A.]

Memo No. 20254-44-2

dated 3.5.44.

Political Agitation – C.D.M. – Trichinopoly district. Prosecution of Periyaswamy and 11 others – withdrawal. Ref. DM's Letter No. Re; D1. 281/44 dated 11.4.44.¹

The D.M. of Trichinopoly is informed that the Government are not prepared to order the withdrawal of the prosecution of Periyaswamy and 11 others on their rendering apologies and direct that the case should go on. He is requested to report the result of the prosecution as soon as the case is over.

2. With reference to para 2 of the DM's letter, copies of the orders mentioned in the margin are enclosed.²

Signed

1. Doc. 207

2. Not printed.



230: Government of India to the Government of Bengal

File No. 4/3/43 - Home Poll (I)
[NAI]

Serial No. 35
D.O. Letter No. 4/3/43 - Poll (I)

Dated 3.5.44.

To
H. Tuffnell-Barrett,
Bengal Secretariat
Calcutta.

My dear Tuffnell-Barrett,

We have seen a report that the Bengal Branch of the All India Spinners Association has successfully instituted some case against Government for confiscating the property of some of its centres such as the Calcutta Bhandar. We shall be glad to know if there is any truth in this report and, if so, what the facts of the cases are, and what the Bengal Government think about it.

Yours sincerely,

Vishnu Sahay

D.S. (I).

231: Government of Bengal to the Government of India ('Independence Pledge' in the Calcutta Corporation)

File No. 3/2/44 - Home Poll (I)
[NAI]

Government of Bengal.

10.5.44

To Olver, Home, G.O.I.

Refer to my letter dated 21st April 1944 . . .¹ I am desired to enclose² herewith a copy of the opinion of the Advocate-General Bengal and to say that in the circumstances stated therein, it is not proposed to take any further action in the matter.

1 Doc. 114 in Chapter I - Sect. B (Earlier Docs on this subject - 147, 148 & 167).

2 Doc. 228.

232 Extracts from Fortnightly Report from U.P. for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

Feroze Gandhi' has been continuing his activity in connection with relief of political prisoners and their families and has circularized districts calling for statistics regarding the number of Congressmen detained or undergoing terms of imprisonment and also the number killed in the 1942 disturbances. He has also decided in consultation with Dr Katju' that the Legal Aid Committee should fight suits on behalf of the dependents of the people shot by police in August 1942 and it is said that one test case has already been filed in Allahabad.

233: Basanta Chandra Ghose and others (Appellants) v. Emperor [Spens C.J. Varadachariar and Zafrulla Khan J.J. (23 May 1944)]

AIR, Vol. 31, 1944, Federal Court, pp. 86–94
(From Patna)

Criminal Appeals Nos 3, 4, 5 and 6 of 1944.¹

M.N. Pal and B.C. De (with S.R. Ghosal), Advocates, Patna High Court, instructed by Gurudayal Sahay, Agent (in 3 and 5); Raghbir Singh, Advocate Federal Court, instructed by Gurudayal Sahay, Agent (in 4); and Raghbir Singh, Advocate Federal Court (M.N. Pal with him), instructed by R.C. Prasad, Agent (in 6) – for Appellants.

(With R.J. Bahadur) instructed by S.P. Varma, Agent (in all) – for the Crown.

Sir Brojendra Mitter, Advocate-General of India (with H.K. Bose, Advocate, Federal Court) instructed by K.Y. Bhandarkar, Agent-Appeared in response to notice issued to him under 0.36, R.I. Federal Court Rules. 1942.

Spens C.J. – These are appeals by certain detenus against orders passed by the High Court at Patna dismissing applications filed by them or on their behalf for their release under S. 491, Criminal P.C. Two of the petitions, from which criminal Appeals Nos 3 and 5 arise, were dealt with by one Division Bench, in a judgment which has discussed the contentions urged in support of the petitions. The petitions in the other two cases were disposed of by two other Benches which have followed that judgment. On behalf of the Crown it was urged before the High Court that ordinance 3 of 1944 – which had been promulgated during the pendency of some of these petitions had taken away the power of the Court to pass any order under S. 491, Criminal P.C., in these cases. By way of reply to that argument the validity of the Ordinance was impugned on behalf of the detenus, certain contentions as to the construction and effect of the Ordinance were also advanced. The High Court upheld the objection raised on behalf of the Crown but granted a certificate under S. 205, Constitution Act. In the main judgment under appeal, the learned judges rejected the limited interpretation which counsel

for the detenus sought to place on Ss.6 (2) and 10 of the Ordinance. They also held that there was nothing to suggest that the Governor of Bihar had not duly passed the orders for detention. Before this Court, the objection based on the Ordinance has been relied on by the Advocate General of Bihar and counsel for the appellants have urged several contentions both in respect of the validity of the Ordinance and in respect of its meaning and effect. It will facilitate the appreciation as well as the discussion of these arguments to begin with a brief narration of the circumstances that led to the promulgation of the Ordinance.

Immediately after the outbreak of the war, provision was made by an Ordinance (ordinance 5 of 1939) promulgated by the Governor-General and by rules framed thereunder for the administration taking all necessary measures to ensure the public safety and interest and the defence of British India. On 29th September 1939, an Act (Defence of India Act 35 of 1939) was passed by the Legislature itself, making necessary provision in this behalf and the Ordinance was repealed. Section 2 of this Act enabled the Central Government to make rules for securing the defence of British India, the public safety, the maintenance of public order etc. Clause 2 of this section contained some further provisions relating to the rules to be so made. One of the rules framed by the Central Government was R. 26, Defence of India Rules, enabling certain authorities to make orders for detention, if they were satisfied with respect to any particular person that it was necessary to make such an order with a view to preventing him from acting in any manner prejudicial to the defence of British India, the public safety, the maintenance of public order, etc.

In (1943) 6 F.L.J. 28 this Court held that R. 26, Defence of India Rules, went further than the rule-making powers conferred by S.2 of the Act, warranted.⁴ As it would have followed from this decision that person detained at the time under orders passed on the basis of R. 26 must be released, the Governor-General promulgated Ordinance 14 of 1943 whose material provisions were:

S.2. For cl. (x) of sub-section (2) of S.2, Defence of India Act, 1939 (35 of 1939) the following clause shall be substituted, and shall be deemed always to have been substituted, namely: (x) the apprehension and detention in custody of any person whom the authority empowered by the rules to apprehend or detain as the case may be suspects, on grounds appearing to such authority to be reasonable, of being of hostile origin, or of having acted, acting, being about to act, or being likely to act in a manner prejudicial to the public safety or interest, the defence of British India, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war, or with respect to whom such authority is satisfied that his apprehension and detention are necessary for the purpose of preventing him acting in any such prejudicial manner, the prohibition of such person from entering or remaining in any area, and the compelling of such person to reside and remain in any area, or to do or abstain from doing anything.

S.3. For the removal of doubts it is hereby enacted that no order heretofore made against any person under R.26, Defence of India Rules, shall be deemed to be invalid or shall be called in question on the ground merely that the said rule purported to confer powers in excess of the powers that might at the time the said rule was made be lawfully conferred by a rule made or deemed to have been made under S.2. Defence of India Act, 1939.

The validity and effect of Ordinance 14 of 1943 had to be considered by this Court in 1944 F.C.R.1. The Court then indicated certain doubts as to the validity of S.2 of the Ordinance, as it attempted to change the statute law with retrospective effect, but it upheld the validity of S.3, with the result that detention orders theretofore passed could no longer be impugned

on the ground that R.26 was not warranted by S.2. Defence of India Act. The judgment of this Court in 1944 F.C.R.1 dealt with two other objections raised against the validity of the orders of detention then under consideration and the objections were upheld, in some instances unanimously and in other cases by a majority. One related to the authority who was to be satisfied as to the necessity for the detention, viz., whether in the provinces it must be the Governor himself or it may be any person to whom certain classes of work may be assigned under S.59. Constitution Act, the other related to the nature and extent of the presumption to be made in favour of the 'validity and regularity' of orders for detention that had been passed under the invalid R. 26. The position taken up on behalf of the Crown in that case and in other cases before the provincial High Courts was that it was not necessary that the order should be the result of consideration in each case by the Governor and that every presumption must be made in favour of its validity and regularity.

This Court pronounced judgment in 1944 F.C.R.1 on 31st August 1943¹ and ordinance 3 of 1944 was promulgated on 15th January 1944. Roughly the purpose of the Ordinance may be described as three-fold. (i) To confer the power of detention, etc., by the Ordinance itself instead of by rules framed under the Defence of India Act . . . see Ss.4 and of the Ordinance. (ii) to limit the term of detention in the first instance, to provide for the review (by certain authorities) of the order of detention from time to time and to give opportunity to the detenu to make representation to the executive authorities against the order . . . vide Ss. 7, 8 and 9; and (iii) to enact a presumption in the Ordinance itself in favour of detention orders to preclude their being questioned in Courts of law and to take away or limit the power of the High Court to make orders under S.491, Criminal P.C., in each cases . . . vide Ss. 6 and 10.

[Omitted: Observations on various judgments connected with these Ordinances in Indian Courts. — Ed.]

The view stated above as to the scope of cl. (2) of S.6 will also determine the ambit of the expression order having effect by virtue of S.6 etc., in S.10 of the Ordinance. But it does not follow from this that the Court can no longer consider the validity of an order which on the face of it appears or purports to have been passed under R. 26.

In our judgment, no further curtailment of the power of the Court to investigate and interfere with orders for detention has been imposed by Ordinance 3 of 1944. The Court is and will be still at liberty to investigate whether an order purporting to have been made under R. 26 and now deemed to be made under Ordinance 3 or a new order purporting to be made under Ordinance 3 was in fact validly made, in exactly the same way as immediately before the promulgation of the Ordinance. At on consideration the Court comes to the conclusion that it was not validly made on any of the grounds indicated in any of the long line of decisions in England and this country on the subject, other than the ground that R.26 was ultra vires. S. 10 of Ordinance 3 will no more prevent it from so finding than S.16, Defence of India Act, did. Such an invalid order, though purporting to be an order will not in fact be an 'order made under this Ordinance' in having effect by virtue of S.6 as if made under this Ordinance at all for the purposes of S.10.

We are accordingly of the opinion that the learned judges who pronounced the main judgment (in Criminal Misc. cases Nos 60/43 and 204/43) erred in holding that the new Ordinance has taken away the power of the High Court to pass any orders under S.491, Criminal P.C., and that the proceedings must be treated as discharged under the provisions

of S.10 (2) of the Ordinance. The judgments in the other two cases purport to follow this judgment. There are observations in some of the judgments bearing upon what may be called the interests of the case. But it is difficult to say that the treatment of that aspect of the case is not likely to have been affected by the view which the learned judges took as to the deprivation by the Ordinance of the power of the Court to pass any order under S. 491, Criminal P.C. It seems to us that in these circumstances the only proper course is to allow all the four appeals and to set aside the orders of dismissal passed by the High Court in all these cases. The cases will be remitted to the High Court with a direction that the petitions be restored to the file and disposed of in due course of law in the light of the decision above given as to the nature and extent of the Court's power in the matter.

Appeals allowed.

1. This is the judgement referred to in Doc 227 above – Ed See also Doc 144
2. Doc. 27
3. Doc. 83.

234: Official Notings about the four appeals filed at the Federal Court (dt 25.5.1944–30.5.1944) (extracts)

File No. 25/7/44 – Home Poll (I)
[NAI]

Notes in the Solicitors' Branch, Legislative Department

Judgment of the Federal Court in these Appeals¹ was delivered on 23rd instant.² A copy of the judgment is placed on the file for perusal and may be retained in Home Department. A copy is also being sent to the Defence Department for information.³

2. It will be seen that the Court has held Ordinance III of 1944 to be valid.⁴ On a question of construction the conclusion arrived at is that the Ordinance does not prevent the Court from investigating whether an order of detention passed under Rule 26 of the Defence of India Rules before the date of the Ordinance (and same is the position of orders passed under the Ordinance) was in fact validly made, the only ground of attack against such orders excluded by the Ordinance being the one based on the invalidity of Rule 26 itself.

3. As the Patna High Court had taken a wider view of section 10 (2) of the Ordinance as depriving the High Court of powers to pass orders under Section 491 of the Criminal Procedure Code in all cases and as that view in the opinion of the Federal Court might have affected their decision, all the four cases are ordered to be remitted to the High Court for being disposed of according to law.

4. The Bill for Junior Counsel engaged in the case is placed on the file. It is in accordance

with the scales prescribed in the Federal Court Rules, 1942. Arrangements may please be made to pay the Bill in due course. The name and address of the Junior Counsel is:

H.K. Bose,
Bar-at-Law.
84 Harish Mukerji Road,
Bhownapore, Calcutta.
Home Department
L.D. u/o No. 913-S/44, dated 25-5-44.

K.Y. Bhandarkar, 25-5-44.

Home Department

For information.

(Action to pay the bill will be taken on the return of the file.)

B.L. Pandey, 26-5-44.

The point of interest in the judgment is the view expounded on page 24. I do not think we need quarrel with this decision.

Vishnu Sahay, 26-5-44.

This was the incidental point referred to in my note of 8/5⁵ and I must say I never expected any other decision.

The main point however is that Ordinance III has been declared valid — and I suppose this is worth paying Rs 1504 for, I presume Legislative Department are satisfied with the judgement — (I have not had time to read it all) and that Defence Department will consider the advisability of drawing the attention of Provincial Governments to the important parts of it.

R. Tottenham, 26-5-44.

Draft to A.G.C.R. put up. F.D. may see before issue, and L.D. after issued.⁶

V. Sahay, 30-5-44.

- 1 Doc. 227.
- 2 Doc. 233
- 3 Not printed
- 4 Doc. 233.
- 5 Not printed.
- 6 For Legislative Dept. reactions see Doc. 237 below



235: Sardul Singh Caveeshar's representation

File No. 44/52/44 - Home Poll (I)

[NAI]

To
The Hon'ble, The Lord Chief Justice,
Of the High Court, Punjab, Lahore,
Through the Superintendent Jail, Dharamsala.

Sir,

I was arrested on the 9th of March, 1942, by the Punjab Police and informed that my arrest was effected under rule 129 of the Defence of India Rules. A few days later I was told that orders had been confirmed by Government of India and that I was in detention under rule 26 of the Defence of India Rules. I was first kept in the Lahore Fort and then transferred to Campbellpur Jail and later to Dharamsala Jail where I am detained at present.

2. On 2nd of May 1943, I applied to the Home Member Government of India for a copy of the order of my detention. On the 17th of May 1943 I was informed that my application for copy of the orders of Government of India had been rejected and that I could be shown orders of the Punjab Government dated the 24th March 1943, ordering my detention in Dharamsala Jail.

3. Later I got a copy of the orders of Government of India through my legal adviser. This order was defective in as much as it was not signed by the proper authority and did not show that before it was issued the case had been properly considered by the authority concerned as required by law.

4. The order of Government of India was defective on another ground also. As the Punjab Police arrested me under rule 129 about 10 o'clock in the morning of 9th March 1942, and the order of Government of India which is also dated the 9th March 1942, was passed under rule 26, it could not have been so passed by the Government of India in Delhi on any adequate information before it for the same day I was arrested in Lahore by the Punjab Police under Rule 129.

5. Even if Government of India order was issued by proper authority and for valid reasons, this order was vacated by the Punjab Government order dated the 24th March 1943, when I was ordered to be released from detention in the Campbellpur Jail, and so could not have any legal effect now after the above order of release. That the Government of India order did not hold good now is also confirmed by the refusal of the Home Member, Government of India to supply me with a copy of it and referring me to the present order of detention by the Punjab Government.

6. The order detaining me now in Dharamsala Jail is dated 24th March 1943 and is issued under signatures of the Chief Secretary, Government of Punjab. But this order is also illegal and without any valid authority on the same grounds as were given in the judgment by the Hon'ble judges of the Punjab High Court in the case of Mr Durga Dass Khanna in connection

with his application under section 491 I.P.C. The case was argued before your Hon'ble Court by Mr Sikri, Bar-at-Law in the month of November 1943.

7. Ordinance III of 1944 makes previous detentions under rule 26 valid and prevents applications to the High Court under section 491 I.P.C. But the said Ordinance does not apply to my case as no valid order under rule 26 existed in my case when that Ordinance was passed and no order still exists to that effect.

8. I, therefore, request your Lordship most respectfully that orders may be issued by your Lordship for my production in the Court and release under section 491 I.P.C.

9. I am extremely sorry to put this application before your Lordship in this crude form and not in the proper legal language. It is because I am not allowed by the authorities concerned to secure necessary legal help. The Security Prisoners Rules allow such legal help, but the officer concerned has refused my application in this connection again and again, and the Jail officers have received instructions not to forward my applications for interview with legal advisers to the authorities concerned.

10. Only a few days back, after corresponding for more than one year, I received information that in reply to my representation to Government of India, I was allowed interview with a lawyer in a special case. But as that permission has nothing to do with the present case, I cannot make use of that permission in this case. I, therefore, request your Lordship to allow me to argue this case in your Hon'ble Court personally with such legal assistance as your Lordship might deem advisable.

I beg to remain Sir,
Your Lordship's Most faithfully servant,
Sardul Singh Caveeshar,
Security Prisoner, Detained in Sub Jail
Dharamsala (Kangra).

Dated Dharamsala
26th May, 1944.

Note: The Federal Court in their judgment dated 23rd May 1944, in the case *Basant Chandra Ghose*¹ etc. Vs. the Crown has held that notwithstanding Ordinance III of 1944, barring applications from detenus under Section 491 I.P.C. to the High Court, the High Courts have powers to hear and adjudicate on such applications — Ed.

1. Doc. 233.



236: Government of India to the Government of Bihar (Jaiprakash Narain's case — Reply of the Bihar Government is also appended with this document)

File No. 3/19/44 — Home Poll (I)
[NAI]

Secret.

D.O. No. 3/19/44 — Poll (I)

Government of India,
Home Department.

New Delhi, the 8th June, 1944

My dear Houlton,

We have been shown a copy of the Bihar Police Administration Report relating to terrorism in 1943 prepared by your Special Branch and have considered whether we could use the atrocity portions and the photographs for propaganda against Congress. The best propaganda would of course be to produce some of the material as evidence in the trial of Jaiprakash Narain and Co. if the incidents could be proved to have occurred in pursuance of the instructions of the underground Directorate or to have been committed by persons who were members of that Directorate's organisation. The proceedings of the trial would then give them all the advertisement that they need, but it will be some time before the trial starts and we do not know yet whether it will be held in camera. It seems to us therefore that it would be worthwhile considering whether some immediate publicity could not be given to some of these incidents and photographs. We do not think we ourselves could publicize them at present, but perhaps the Bihar Government could start a local publicity campaign as suggested at the end of the Report. We might, of course, be able to use some of the material during the next session of the Legislature.

Yours sincerely,

(Richard Tottenham)

To

J.W. Houlton Esquire, C.I.E., I.C.S.,
Chief Secretary to the Government of Bihar, Patna.

Reply to the above Letter

Bihar Secretariat.

Political Department.

D.O. No. 2743 C.451/44

Patna.

The 19th June 1944.

My dear Sir Richard,

Please refer to your Secret. D.O. letter No 3/19/44 — Poll (I), dated the 7th June 1944. The

passage about terrorism in 1943 to which you refer is not actually a part of the Bihar Police Administration Report. It is a draft which has been sent to Inspector General of Police and which may be amended or amplified before inclusion in the report. I understand that some statements of fact need checking. With regard to the suggestion that the atrocity incidents might be used at the trial of Jaiprakash Narain, the difficulty would be to establish the direct connection between his activities and the incidents, unless some more definite evidence comes to light. The Tarapur mutilation case was the result of the proceedings of a Congress Court, and seems to be unique. The other cases are generally cases of murder and mutilation of suspected police informers or of rural policemen who had tried to do their duty loyally. There is no doubt that this was part of a planned campaign of terrorism to make people keep their mouths shut. Terrorization of witnesses in cases against the political bandits has also been common (and successful). If it could be proved that Jaiprakash Narain issued orders or instructions to carry out this policy of terrorization, murder and mutilation, it might be possible to bring in the incidents as consequences for which Jaiprakash Narain can be held responsible. The trouble would be to satisfy the court of the relevancy.

As regards immediate publicity, we have published an article on dacoity written by myself in simple language to get home to the ordinary villager, and illustrated by the photographs of mutilated men. This was published in our newspaper 'DEHAT' in English and Hindi. It was sent to the local press, but no other newspaper had the courage to print it. I enclose a copy of the article.¹ The captions under the photographs were altered to avoid references to any cases heard in the courts.

Yours sincerely,

J.W. Houlton,
(Chief Secretary to Government)

Sir Richard Tottenham, CSI, CIE, ICS,
Additional Secretary to the Government of India,
Home Department.

¹ Not printed.

237: Official Notings — Legislative department notes on judgements relating to Ordinance III¹ (dt 9.6.1944–13.6.1944) (extracts)

File No. 25/7/44 – Home Poll (I)
[NAI]

The two main points decided are –

- (i) Sub-section (2) of section 10 of the Ordinance either has no wider operation than sub-section (1) or is void and inoperative, inasmuch as it amounts to a judicial act distinct from a legislative act. – p. 12 to 17 of the judgment.

- (ii) The Courts are at liberty to investigate whether an order purporting to have been made under rule 26 or under section 3 of the Ordinance was in fact validly made, and section 10 does not prevent them from finding that it was not validly made.

I see no reason to be perturbed by either of these decisions.

K. Sundaram, 9.6.44.

Defence Department

L.D. u/o No. 1337 of 44, dated 9.6.44.

Defence Department

We have already seen the judgment separately.

The point of reference to this Department is whether it is considered necessary to draw the attention of the Provincial Governments to the important parts of the judgment delivered by the Federal Court relating to the appeals from decisions of the Patna High Court in respect of four persons detained under Ordinance III of 1944.² The important parts of the judgment have been summarized in Mr Sundaram's note and in view of the last sentence of that note it is for consideration whether the Provincial Governments need be addressed in the matter. As, however, the judgment deals mainly with the validity of Ordinance III of 1944 it seems preferable that the Home Department who are administratively concerned with it might address Provinces, if at all. (Our papers containing the judgment are put up.)³

M.A. Husam, 12.6.44

Under Secretary.

A.S., 10.6.44.

I would suggest that it is for Home Department to address Provinces if they so desire I think this is 'their' Ordinance. But I do not myself think that it is necessary to do so.

L.J.D. Wakely, 12.6.44

Home (Mr V. Sahay)

D.D. u/o No. 5427-Dc/44, dated 13.6.44.

A letter came from Bombay yesterday about the Gokhale case⁴ which also I think deals with the non-applicability of S. 10 argument. Let me see.

V. Sahay, 13.6.44.

The Bombay point is different. No action necessary on this judgment.

V. Sahay, 15-6-44.

¹ See Doc. 233.

² See Docs 227 and 233.

³ Not printed.

⁴ Doc. 224 (Gokhale's case).



238. Extracts from Fortnightly Report from Orissa for the first half of June 1944

File No. 18/6/44 – Home Poll (I)

[NAI]

1. *Security Prisoners.* Of the 330 security prisoners under detention at the end of April 1944, 53 have been released. The Provincial Government have constituted a committee, with the Inspector General of police as chairman and a retired District Magistrate and a retired District Judge as members, to examine the grounds on which a majority of the existing prisoners are detained. This committee is now making its recommendations to the Provincial Government.

239. Government of Bengal to the Government of India (regarding A.I.S.A.)

File No. 4/3/43 – Home Poll (I)

[NAI]

Secret.

Bengal Secretariat,
Calcutta,
The 20th June 1944.

D O. No. 642–P.S.,

My dear Sahay,

Please refer to your Demi-Official letter No. 4/3/43 – Poll (I) dated the 3rd May 1944¹ enquiring about details of some cases instituted by the A.I.S.A. in respect of properties seized from some of their centres in Bengal. Three such cases occurred one at Calcutta and the other two at Bankura. In all three cases the claim for the properties was preferred by the trustees of the Board of Trust A.I.S.A. Bombay and not by the Bengal Branch (A.I.S.A.) which has been declared unlawful by this Government under section 16 (1) of the I.C.L.A. Act 1908. The case relating to the Calcutta Bhandar was heard in the Court of Small Causes, Calcutta and the particulars of the case will be found in the judgment of the Court, a copy of which is enclosed. It appears from that the claim by the Trustees was allowed on the ground that (1) the properties seized at the Bengal Branch Office belonged to the Bombay Office which had not been declared unlawful and (II) that there was no evidence to show that the articles seized were used or might be used for the purposes of an unlawful association.

2. The two Bankura cases were similar in nature and there also the claimant Trustees were successful in getting back the seized properties.

Harry George Waight

To
V. Sahay, Esqr., I.C.S.,
Dy. Secretary to the Government of India,
Home Department.

Enclosure: Particulars of the Case

Statement of Case for the opinion of the learned Advocate-General of India.

Subject: Criminal Law Amendment Act (XIV of 1908).

- Encl. 1. Small Causes Courts Judgment
 2. File No. 317/32-C.&G., 1932.

In the Court of Small Causes of Calcutta.
Before the Chief Judge.

Proceeding No. I of 1943 under the provisions of sub-sections (b) and (7) of Section 17 B of the Criminal Law Amendment Act (Act XIV of 1908) in respect of representations made to the Commissioner of Police, Calcutta and forwarded by him.

The All India Spinners' Association & ors

vs

The Province of Bengal

Judgment

This proceeding arises under the provisions of sub-sections (b) and (7) of Section 17B of the Indian Criminal Law-Amendment Act (Act XIV of 1908) in respect of certain properties seized in certain premises in the College Street Market claimed by the All India Spinners' Association of Bombay and six other claimants whose representations under the provisions of sub-section (4) of Section 17 B of the said Act were rejected by the Commissioner of Police, Calcutta and forwarded to me under the provisions of sub-section (b) of Section 17 B for adjudication upon the representations.

2. The matter has been heard before me at some length and in making the adjudication under sub-section (b), under sub-section (6), under the provisions of sub-section (7) I have followed the procedure laid down in the Code of Civil Procedure, 1908 for the investigation of claims so far as it could be made to apply.

3. The facts and circumstances which led up to the present proceedings are briefly these. The All India Spinners' Association of Bombay had amongst many other of its Bengal branches one at College Street Market, Calcutta. The municipal numbers were B 85, 86, 15 and 16 (converted into one room) on the ground floor. This was the shop room. On the first floor the municipal numbers were C. 28 to C 31. This was the office and go-down. It appears that as far back as the 11th October, 1942 under the Defence of India Rules there was a search of the aforesaid premises made by the Police. The goods and all properties in the aforesaid shop room, office and go-down were seized, locked up and sealed by the Police. Thereafter the business that was being carried on in the aforesaid premises ceased and the properties continued to remain in the custody of the police. No further action seems to have been taken in the matter until the 4th March, 1943 when the notification No. 901 P dated the 26th February, 1943 published in the Calcutta-Gazette dated the 4th March 1943 was issued declaring the All-India Spinners' Association, Bengal Branch unlawful by the Government of

Bengal under the provisions of Section 16 (1) of the Criminal Law Amendment Act, 1908. On the same day another notification was issued declaring the place unlawful under the provisions of Section 17A (1) of the aforesaid Act. Thereupon it seems the Commissioner of Police commenced preparing a List of all moveable properties found in the aforesaid premises, from the 3rd March, 1943 to the 1st April, 1943 when it was said that the List was completed. Thereafter on the 2nd April, 1943 the Commissioner of Police issued a notification calling upon any person claiming that any article not liable to forfeiture to submit in writing within 15 days any representation he desires to make against the forfeiture of the articles under the provisions of sub-section (4) of Section 17 B in respect of the ground floor only. On the 14th April, 1943 another notification was published by the Commissioner of Police in respect of the first floor. Claims in respect of the ground floor were filed on the 16th April 1943 and in respect of the first floor on the 19th April, 1943. On the 24th May, 1943 representations in respect of certain articles were rejected by the Commissioner of Police and were forwarded to me for adjudication under the provisions of sub-section (6) of Section 17B of the Act.

After giving the usual notices the investigation of the claim proceeded before me.

At the commencement of the proceedings the following issues were raised and consented to by both sides — (1) are the claimants interested in or possessed of the properties seized, (2) whether the articles specified in the List, are or may be used for the purposes of the unlawful Association.

The claimant No. 6 Messrs. P.D. Himatsinka & Co., Solicitors for the Trustees of the Board of Trust, All India Spinners' Association is the principal claimant who is contesting. Claimant No. 7 is the Corporation of Calcutta who are claiming certain fixtures, and the other claimants are employees of the All India Spinners' Association, Bengal Branch, and they are claiming certain articles as their personal belongings.

So far as the evidence is concerned claimant No. 6 called their Secretary Babu Jitendra Kumar Chakravarti who was examined and cross examined at some length. Claimant No. 7 the Corporation called their bill collecting Sircar Babu Narendra Kumar Banerjee. Besides these, no other witnesses have been examined.

I will now deal with Issue No. 1. The evidence adduced on behalf of claimant No. 6 has clearly established the fact that the All India Spinners' Association, Bengal Branch carrying on business in the College Street Market is only a Branch of the All India Spinner's Association, Bombay. The business of the Bengal Branch was carried on through its Secretary who received all his orders from the Head Office in Bombay. The Articles of Association and many resolutions passed by the Directors at the Head Office and communicated to the Secretary of the Bengal Branch have proved this fact. Moreover, their evidence shows that the Secretary of the Bengal Branch submitted the budget estimate of the year to the Head Office which approved and sanctioned the same. Income Tax Returns were also sent to the Head Office in Bombay. There are innumerable entries in books of accounts which have been produced before me which clearly show how monies were disbursed and credited in accordance with the instructions sent from the Head Office to the Secretary of the Bengal Branch from time to time. On an examination of all the documentary as well as oral evidence adduced before me I cannot but come to the irresistible conclusion that the claimant No. 6 carried on business through its Bengal Branch at the College Street Market and the properties claimed by them belong to them and were in their possession at the time of the seizure. There is abundant evidence to support this fact and there is no rebutting evidence to prove otherwise. With regard to the other claimants, except claimant No. 7, the Corporation of Calcutta, it has also

been proved by evidence that they are employees of the Bengal Branch. There is also evidence to show that the properties claimed by them belong to them. The very nature of some of the articles claimed, e.g. Punjabis, dhoties and other wearing apparel, clearly proves their ownership in the absence of any rebutting evidence. With regard to the claimant No. 7, the Corporation of Calcutta who are claiming certain fixtures, they are the owners thereof and were in possession through their tenants. On the determination of the tenancy, they will be entitled to take actual possession of the same, so their claim is allowed on that basis.

9. As regards all the other claimants I find on the evidence that having proved that the properties set out in the List made by the Commissioner of Police they are entitled to the possession of the said properties with the exception of a certain number of pamphlets which are alleged to contain objectionable matters and some magic lantern slides. The claimant No. 6 has abandoned his claim in respect of these pamphlets and magic lantern slides.

10. I now come to issue No. 2 as to whether or not the articles specified in the List are or may be used for purposes of the unlawful Association. So far as this issue is concerned there is not an iota of evidence to support it. It has of course been contended before me that these articles are or may be used for the unlawful Association. In the absence of any evidence proving the fact such an argument is not only untenable but preposterous. From the very nature of the articles mentioned in the List it would be absurd to hold that such articles are or may be used for the unlawful Association. It has been suggested that the money realized by the sale of these articles in the course of business are or may be diverted for the unlawful Association and that in sub-section (2) of Section 17 B after the words 'any articles specified in the list' should be understood to include the words their 'equivalent value in money.' In my opinion by no stretch of imagination or language there can be such an interpretation of the sub-section (2) runs as follows:

(2) If, in the opinion of the District Magistrate, or in a Presidency town the Commissioner of Police, any articles specified in the list are or may be used for the purposes of the unlawful association, he may proceed subject to the provisions hereafter contained in this section to order such articles to be forfeited to His Majesty

From the above it is quite clear that the provisions of the sub-section provides for dealing with only articles specified in the list and nothing more. Moreover, there is specific provision namely Section 17E which similarly provides for dealing with monies, securities or credits, and this being so, it is idle to argue that the articles or their equivalent value in money should be understood, when there is a specific provision of law dealing with monies etc.

11. It is a curious fact that on the 11th October, 1942 when the articles were seized under the Defence of India Rules and locked up by the Commissioner of Police, the business naturally closed and how it can now be argued that after the lapse of so many months while the goods remained in the custody of the police locked and sealed, they are or may be used for the unlawful Association.

12. Having considered the matter in the light of the evidence that has been adduced before me and in the absence of any evidence adduced by the opposite party I find that the articles seized cannot be used for the unlawful Association.

13. It is admitted that the All India Spinners' Association of Bombay has not been declared an unlawful Association, and as I have found on the evidence that the articles seized belong to the said All India Spinners' Association of Bombay and their employees, in my opinion they are entitled to possession thereof; and the articles seized should be delivered to them.

with the exception of the pamphlets and magic lantern slides for which the claimant No. 6 has abandoned their claim.

14. Let a copy of this decision be sent to the Commissioner of Police to enable him to take such action as he thinks fit and proper in accordance with the provisions of sub-section (3) of Section 17 B.

A.S.M. Laufur Rahman
Chief Judge, 18-3-44.

This is certified to be a true copy.
Given under the seal of this Court
This 21st day of March 1944.

Signed
Illegible
Senior Superintendent.

Doc 230.

240 Extracts from Fortnightly Report from Orissa for the second half of June 1944

File No. 18/6/44 – Home Poll (I)
[NAI]

4. *Security Prisoners.* Since the last report, orders for the release of 58 prisoners have been issued and orders for the release of additional 28 are under issue. Since the end of April, Government have ordered the release of 86 prisoners and previous to that date they ordered the release of 116 prisoners. The aggregate number of prisoners affected by all orders passed so far is 202. The advisory committee has reviewed the grounds of detention of 127 prisoners and their recommendations on 21 more are awaited. The committee has recommended the release on condition of 40 prisoners, and the further detention of 55 prisoners. For special reasons the cases of 46 unreleased prisoners were not submitted to the committee.



241: Government of Assam to the Government of India (Dhakiajuli case)

File No. 3/61/43 – Home Poll (I)
[NAI]

Government of Assam
Home Department Confidential Branch

No. C.150/42/153,

dated Shillong, the 8th August 1944

From
H.G. Dennehy, Esq., C.S.I., C.I.E., I.C.S.,
Chief Secretary to the Government of Assam,

To
The Secretary to the Government of India
Home Department.

Subject:

Reference: This Government's Letter No. C. 150/42/122 of the 28th January 1944¹

Sir,

I am directed to say that the case was heard on the 2nd March 1944. Although the sentences passed by the Special Magistrates had been validated by Ordinance No. XIX of 1943, the Hon'ble Judges still held the trial to have been without jurisdiction and declined to interfere with the judgment of the trial court or to expunge the objectionable passages from the judgment. It appeared that they considered it was open to the Assam Government to obtain a proper order with proper remarks when the case of the absconding accused comes up for trial before an ordinary court. One of the absconders in the case is now on trial, but it is not possible to see how the result of this trial could affect the result of the former.

I have the honour to be,
Sir,

Your most obedient servant,

Chief Secretary to the Government of Assam.

¹ Doc 149

See also Docs 4, 44, and also Docs 53, 55, 74 in Chapter II. Ed



242: Government of India to all Provincial Governments (regarding A.I.S.A.)

File No. 4/3/43 – Home Poll (I)
[NAI]

F.No. 12(2)–P(S)/44. Government of India Poll Department.

Secret.

Government of India
Home Department

Express Letter

From
Home, New Delhi.

To
All Provincial Government and Chief Commissioner,
Delhi,
Ajmer,
Coorg,
Baluchistan.

No. 4/3/43 – Poll (I)

New Delhi, the 23rd August, 1944

Our attention has recently been drawn to a judgement of Chief Judge in the Court of small Causes, Calcutta¹ holding that certain articles belonging to the Bengal Branch of the All India Spinners Association which had been forfeited pursuant on the declaration of the Branch to be an unlawful association, were not articles that could be used for the purposes of the unlawful association and should therefore be returned to their owners. The Judge also held that since the articles seized were the property of the parent association in Bombay, or of the employees thereof, and since that Association had not been declared unlawful, they were entitled to be returned on those grounds also.

2. The Judge was in our opinion labouring under a misapprehension in two respects; in the first place, the criterion on which forfeiture is to be decided is not that of ownership, but whether the article in question 'may be used for the purposes of an unlawful association' and in the second place, he appears to have confused the phrase 'for the purposes of an unlawful association' with 'for the unlawful activities of an unlawful association.'

3. A copy of an opinion recorded on this subject by the Advocate – General of India is attached for information. We trust that this will be of assistance to you in arguing points of this nature should they arise in future cases, either Civil or Criminal, arising out of action taken under the Criminal Law Amendment Act. We consider it particularly important that the doctrine that a branch of an organisation cannot effectively be declared an unlawful association without so declaring the parent organisation, should be effectively resisted.

(R. Tottenham)

Additional Secretary to the Government of India.

Enclosure

Opinion of the Advocate General of India

1. The questions put to me relate to the interpretation of certain sections of the Criminal Law (Amendment) Act, XIV of 1908. The All-India Spinners Association has its registered office in Bombay. It had branches in various provinces, one of which was the Bengal Branch in Calcutta. On the 28th February 1943, the Bengal Government, acting under Section 16 of the Act, declared the Bengal Branch to be an unlawful Association. The first question put to me is —

Can a branch be declared an unlawful association without declaring the parent institution an unlawful association?

In section 15 the word 'association' has been defined to mean any combination or body of persons, whether the same be known by any distinctive name or not. I take it that the Bengal Branch consisted of a body of persons who acted under the guidance of the parent body in Bombay. The Branch was a distinct entity and, as such, could be declared an unlawful Association provided that it consisted of a combination or body of persons. The answer to the question is in the affirmative.

2. The second question is —

Is the question of title at all material to the exercise of the right of forfeiture under Section 17B of the Act? Is the adjudicating tribunal under Section 17B (b) entitled to go into the question of title?

Under section 17B (2), the articles liable to forfeiture are 'articles specified in the list which in the opinion of the District Magistrate or the Commissioner of Police are or may be used for the purposes of an unlawful association.' The criterion is user, either actual or potential, irrespective of the ownership of the articles. The answer to the first part of the question is in the negative. The second part of the question is a corollary to the first. Adjudication of the question whether any article is liable to forfeiture depends on the opinion, as to user as aforesaid, of the District Magistrate or Commissioner of Police, subject to revision by the District Judge or Chief Judge, Small Cause Court respectively. Any person can make a representation claiming, not ownership of the article, but that the article 'is not liable to forfeiture'. This means that the representation, to be valid, has to show that the article is not used nor capable of being used for the purposes of an unlawful association. Ownership of the article, or, in other words, the question of title is immaterial. Liability to forfeiture being the question for adjudication, the adjudicating tribunal can only take into consideration the matter of user or fitness for use and cannot go into the question of title. If title bears upon user, then, it may be relevant. For instance, a pair of old shoes seized in a notified place may be claimed by the owner as not being used not fit for use for purposes of the unlawful association concerned. Here, the claim is based, not on title, but on user or fitness for use for a particular purpose. The answer to the second part of the question is in the negative.

3. The third question is —

Does the expression 'for the purposes of the unlawful association' cover only the unlawful activities of an unlawful association and not its other activities?

In my opinion, the expression covers all activities. It is not limited to unlawful activities. The whole object is to immobilize the unlawful association and kill all its activities.

4. The fourth question is –

(On whom is the burden of proof to be laid in the course of an adjudication under Section 17B (6)?

The proceedings start with seizure under Section 17B (1). The, the District Magistrate or Commissioner of Police has to consider the question of user and form an opinion, and in case the opinion is adverse, to order forfeiture. Forfeiture does not become operative till publication of the intention to forfeit under sub-section (4) and consideration of claims and rejection thereof under sub-section (6). The claimant has to make good his claim that the user of the seized article is innocent and not for any purpose of the unlawful association. If no claim be made or the claim is not made good, then the order of forfeiture stands. The burden of proof is, therefore, on the claimant. It should be noticed that when a District Magistrate or Commissioner of Police rejects the representation of a claimant, all he has to forward to the District Judge or Chief Judge Small Cause Court is his decision only, without any reasons for his opinion. The claimant cannot succeed unless he is able to displace that opinion. The burden is, therefore, on the claimant.

B.L. Mitter,
Advocate General of India.

New Delhi
16th August 1944.

1. Doc. 239 above.

243: Government of Punjab to the Government of India (Caveeshar's case)

File No. 44/52/44 – Home Poll (I)
[NAI]

Express Letter

From
A.A. MacDonald, Esquire, O.B.E., I.C.S.,
Home Secretary to Government, Punjab.

To
The Additional Secretary to the Government of India,
Home Department, New Delhi.

Nos: S-4982 BDSB,

Dated Simla-E, the 31st August, 1944.

Your express letter No. 44/52/44 – Poll (I), dated 25.8.1944 [copy appended with this document – Ed.] regarding the *habeas corpus* petition filed by Sardul Singh Caveeshar.¹

2. The High Court has agreed to hear the case in camera.

3. Sardul Singh Caveeshar applied for a copy of his detention order under rule 26,

D.O.I.R., on 3.5.43.² There being no provision either in the D.O.I. Act or in the rules made thereunder entitling a detenu to a copy of his detention order no copy was supplied, but the Superintendent of the Sub-Jail, Dharamsala, was told that he could show the detention order to the detenu. This application was disposed of before the receipt of your letter No. 2-DC (14)/44, dated 29.2.44.³ Sardul Singh Caveeshar has not submitted any application for legal assistance in the preparation of his *habeas corpus* petition to the High Court. He was previously allowed an interview with Mehta Amar Nath, Advocate, Lahore, on the 3rd of October, 1943, in connection with an appeal to the Privy Council and an application to the High Court for his release.

4. The present order of the Punjab Government determining the place of detention of Sardul Singh Caveeshar is open to the same objection as that raised in respect of the order passed in the case of Jai Prakash Narayan. It is, therefore, requested that an order under section 3 (4) of the Restriction and Detention Ordinance be passed by the Central Government and forwarded to us before the next hearing of the case on September the 11th. A copy of the Pb. Government order of July 28th, 1944,⁴ is enclosed.

5. The Assistant Advocate General has raised the question as to whether power was duly delegated to the Additional Secretary to the Government of India on whose signature the order of the Central Government under Rule 26 of the Defence of India Rules, dated 9.3.42, was issued and to the Joint Secretary to the Government of India on whose signature the order under section 9 of the Restriction and Detention Ordinance dated 1.7.44 was issued, or whether the matter in both cases received the personal attention of H.E. the Governor-General. The Assistant Advocate-General requires an affidavit on this point to be produced in court and it is requested that this may be forwarded to us with the least possible delay.

6. Our Advocate-General is on leave, and the Assistant Advocate-General is somewhat inexperienced. It is, therefore, suggested that since Sardul Singh is a Central Government prisoner, your Advocate-General might be instructed to appear in the High Court in his case on September the 11th, as he will be present in Lahore on that date in connection with the petitions of Dwijendra Nath Bose and Arabindo Bose.

(A.A. MacDonald)

Home Secretary to Government, Punjab

Enclosure:

Government of India
Home Department.

Express Letter

From
Home, New Delhi.

To
The Secretary to the Government of the Punjab,
Home Department, Simla.

No. 44/52/44 - Poll (I), New Delhi, the 25th August, 1944.

Your memorandum No. S-4263-B.D.S.B. dated 18th August, 1944, forwarding a copy of a *habeas corpus* petition filed by Sardul Singh Caveeshar.

2. We agree that if the Court declines to hear the case in camera, it will be desirable to issue orders under Defence Rule 41 prohibiting all references to the proceedings in the Press. We should be glad to have as long as possible advance notice, should this action on our part be necessary.

3. We observe that in paragraph 5 of his petition, Caveeshar refers to the refusal of the Home Member, Government of India, to supply him with a copy of the order under which he is detained. We can find no authority for this statement. Refusal to supply him with a copy of this order would of course be contrary to the General instructions on the subject contained in the Government of India Defence Department letter No. 2-DC (14)/44 dated 29th February 1944. We note further in paragraphs 9 and 10 that Caveeshar makes much of the fact that he has not been permitted legal assistance in the preparation of his petition. We shall be glad to have your comments on this allegation. Please see our D.O. letter No. IV/3/43-M.S. dated 1st May 1944.

4. You will no doubt see that the Punjab Government's order of 24th March, 1943, is not open to the objections which were recently pointed out in J.P. Narayan's case (see this Department's letter No. III/4/43-M.S. dated 22nd August 1944) and we should be glad to be supplied with a copy of this order as soon as possible.

(R. Tottenham)

Additional Secretary to the Government of India.

1 Doc. 235.

2 Not printed

3 Doc. 183.

4 Not printed.

See also Docs 81 and 82 in Chapter XVI

244: Government of India to the Government of Bengal

Govt. of Bengal (Home) File No. 474/44
[Bengal State Archives]

Secret

D.O. No. 3/31/44 – Poll (I)

Government of India,
Home Department

New Delhi, the 8th September 1944.

My dear Barrets,

Our case against Congress or the Congress High Command, for responsibility for the 1942 disturbances is now about as complete as we can hope to make it except in one important respect – namely, judicial pronouncements on the subject. As a result of various letters to

Provincial Governments we have received a large collection of judgments in rebellion cases; but the supply of these has dried as for the last year; and in any case, we have found it an almost impossible task to go through all those that we have received, extract from them the sort of thing we have been looking for. We have no desire whether to impose further work on Provincial Governments, nor do we ourselves want to receive any further complete copies of judgments. What we have in mind rather is that each Provincial Government (or, at least each Provincial C.I.D. or Special Branch) would have no difficulty in recollecting any really important pronouncements by the courts (naturally the higher, the better), on the general question of the responsibility of the Congress organisation or its leaders for the disturbances. If we could make a representative collection of such pronouncements in the form of brief extracts from judgments, it would be a very valuable addition to our records. We realize that in some Provinces there may be no such pronouncements, while in others there may not be more not be more than one or two. That does not greatly matter. Even a dozen good instances covering the whole of British India would be quite sufficient. If, therefore, any examples of the kind of thing we want readily occur to you we should be very much obliged if you could let us have them. If you have already sent us the judgment containing the pronouncements in question, it would, of course, be sufficient simply to refer us to them.

Yours sincerely,

(R. Tottenham)

To

Tuffnell Barrett, Esquire, CIE, ICS,
Additional Secretary to the Government of
Bengal, Home Department, Calcutta.

245: Official Notings regarding the continued detention of 4 men of the Army (dt 14.9.1944-21.12.1944) (Extracts)

File No. 39/16/44 - Home Poll (I)
[NAI]

There were originally four men of the 1/15 Punjab Regiment under detention. They were

1. Subedar Kartar Singh, Sikh, s/o Achhar Singh of Hoshiarpur District.
2. Hav. Ujagar Singh, Sikh, s/o Suchet Singh of Lyallpur District.
3. 1/NK Piara Singh, Sikh, s/o Harnam Singh of Lahore District.
4. Sep. Nazar Singh, Sikh, s/o Santa Singh of Hoshiarpur District.

They were believed to be implicated in an attempted murder of Hav. Hazara Singh, but it was impossible to secure sufficient evidence to bring anyone to trial although there were strong enough grounds for the discharge of all four men from the Army. Investigation which followed the attempted murder led to disclosure of anti-British, pro-Japanese and pro-Congress sentiments among some men of the unit.

2. H.M. in his minute of 30.6.44 recommended the release of Kartar Singh and D.I.B. and D.M.I. agreed. The remaining three were detained under orders which will be in force until 6th October, 1944.

3. Summaries of the evidence against these three men are in the folder below (flag 'N'). (Notes below)

(a) *Hav. Ujagar Singh*. Three independent sources made statements that Ujagar Singh was connected with subversive organisations and was therefore a danger to security if he remained at large. However his alleged friendliness with an individual suspected of an attempted murder cannot be considered as contributory ground for detention. In any case, this allegation comes from Hazara Singh who was the victim of the attempt. It is doubtful therefore whether we can accept this or for that matter any other of Hazara Singh's statements which may well have been made after the attempted murder (the date of which is not given) and, even if made before, might possibly have been based on personal enmity which eventually led up to the attempted murder. The case against Ujagar Singh rests on little more than two independent statements which do not in my mind justify further detention and I feel we should ask for more evidence. (In August 1944, Ujagar Singh was interrogated in C.S.D.I.C. but we have had no details).

(b) *L/NK Piara Singh*. The evidence against Piara Singh does not, as it stands, justify continued detention. The only important item against him is his friendship with Hardy Singh unless of course Hazara Singh is considered reliable. H.M. in his minute of 30.6.44 disposed of the statement made by the 'four witnesses'. There are I think sufficient grounds for restriction.

(c) *Sep. Nazar Singh*. The case against Nazar Singh is very flimsy. There is really no evidence to warrant further detention and Nazar Singh, together with the other three, has paid some penalty already in the form of discharge from the Army and will have spent six months in prison. He should, I feel, be restricted to his village.

14.9.44.

(G.A.T. Shaw)

Attache.

U.S. (I).

I would also draw attention to the representations made by these three prisoners in reply to the communication of grounds of detention at pages 24-16/c.

2. I doubt whether, with the material available, we are in a position to make possible exception is Ujagar Singh whose further detention on the available material would probably I think be justified. We should in all three cases ask D.M.I. for further information. This should include the interrogation report of Ujagar Singh; and if the other two prisoners have not been interrogated, we might I think suggest that this should be done.

3. Leaving a sufficient period for submission to H.M. and for communication of orders to the Resident, Indore, we have less than a fortnight in which to obtain this further information. I doubt whether it will be forthcoming within this period. We say ask D.M.I. whether he is likely to be able to supply us with further material by September 30th. If not, we may ask him to obtain the information required separately and send it on to us in due course as available, and meanwhile to return this file without delay. We shall then have to extend all three detention orders pending a full examination of the case, as was done in

the case of the C.I.H. and R.I.A.S.C. prisoners. This is not a very satisfactory method, but I see no alternative.

4. It is clear that an average review of a detention case if, thoroughly carried out, is likely to take considerable more than the one month's grace during which extension orders can be passed under section 9 of the Ordinance. There is nothing however to prevent cases being examined before the beginning of this month and I think it should in future be routine that all cases are submitted for commencement of review at least two months before the detention order is due to expire.

19.8.44.
(S.J.L. Oliver).

D.S. (I)/Secy.

General Staff Branch (M.I. Directorate)

Reference the noting in this case.

2. These men were detained at the request of, and on evidence provided by, H.Q. Southern Army. We have now asked that H.Q. for any further evidence they may have on record or have obtained since the men were detained.

3. Taking into consideration the past unrest in this unit, I recommend strongly that these three men should continue in detention for a further period of three months while their case is being re-examined.

Cawthorn
D.M.I. 27 September 44

Home Department (Sir Richard Tottenham)

Will H.M. please see notes from p. 30 ante? The detention orders against these three persons will expire if not extended before October 6th. I agree that the case should have been taken up for consideration earlier and that more information is really required. I agree also with D.S. that, strictly speaking, the fact that we require further information shows that we are not satisfied and, if we are not satisfied originally that it was necessary to detain these people and I do not think their representations, by themselves, are sufficient to make us change our view. I would, therefore, recommend the issue of extension orders in these cases on the understanding that they will be reconsidered as soon as the full report has been received from H.Q. Southern Army. It is also most important that these cases should be taken up for review in future in plenty of time, even though the extension orders cannot issue until some time during the month preceding the date of expiry of the original orders.

(R. Tottenham)
Secretary, 28.9.44
Signed R.F. Mudie
28/9

H.M.

Extension orders accordingly

R. Tottenham
28/9

**General Staff Branch
(M.I. Directorate)**

In continuation of my note, dated 27 Sep 44, at page 33 of the file, it has not been possible to produce additional evidence against the three men now under detention.

2. In such cases, evidence in detail sufficient for normal legal action, is seldom forthcoming and it may be pointed out that, had such evidence been available, the men would have been put on trial instead of being detained. Other considerations must be taken into account and in this case the Security history of this unit shows that a spirit of unrest had prevailed for some years and that there had been contact with SUBHAS CHANDRA BOSE before the latter escaped to Europe. It was from 1/15 Punjab Regt. that a platoon of Sikhs deserted to the enemy in 1943 and included one of the original Bose contacts who had become a senior N.C.O. The majority of these men are still in enemy hands and most of them are believed to be cooperating with the Japanese against us. I may add that investigation into the past history of this unit is still continuing and the C.I.D. are cooperating with the military authorities in this enquiry. Some of the missing platoon have been recaptured and information obtained from them confirmed that intrigues lasting over years created a very unhealthy spirit in this unit. This continued investigation of the case may well result in the provision of further evidence or material against the three men now detained. In the meantime there is justification for the comment that much trouble would have been prevented in the Army during this war if trouble makers against whom the information was 'Laght' had been dealt with vigorously under wartime emergency legislation. The object of this legislation is, it is submitted, to cover such contingencies, and to insist on too high a degree of proof in such cases is to vitiate and render the legislation abortive.

3. As pointed out an exhaustive enquiry failed to produce legal evidence on which to try these men. Government of India in the Home Department were approached and approved their detention on the evidence available. The same conditions still exist, although additional evidence is not available, I strongly recommend that the three men continue in detention while investigations continue and while the Officer Commanding the unit is doing his utmost to restore a healthy spirit amongst his men.

4. With reference to Home Department note, dated 10 Nov. 44, on page 38, it is not desired to interrogate Piara Singh or Nazar Singh as this was done most thoroughly during the Court of Enquiry held in the unit. In addition, the interrogation of Hav. Ujagar Singh at C.S.D.I.C. revealed nothing new.

5. A copy of the Security history of the unit is attached for information.

Cawthorn
Major-General
D.M.I.

Home Department
through
War Department

U.O.No. 5641/VI/DMI dated 16.11.44.

War Department

I agree with Home Department that, if these cases are looked at in a judicial light from the point of view of whether there is enough evidence to convict an individual, the evidence is

scanty and insufficient. But surely the DMI is right in suggesting that it was not intended that Ordinance cases should be viewed in quite this light, and this appears to have been the initial view of the Home Department. The emphasis, it is suggested, has shifted so that instead of considering whether there is danger of injustice to an individual (which must always be the first consideration in a judicial enquiry), we have to consider first whether there is danger to the State.

2. The dangers are first, that recruiting may be affected, and secondly that enemy agent in the country may contact these men and be assisted in introducing subversive material to serving troops. The first of these is the lesser danger though the more probable. The second, which is much more serious, must be considered in the light not only of the actual evidence against the individuals, but the evidence against the unit, for which the statement at 'O' should be seen.

3. It seems clear that men in the unit contacted Bose sympathizers and that as a result someone introduced subversive material which resulted in the desertion of a platoon. The enquiry indicated that these men were the leaders; and since there must have been some leaders, we can only suppose that these men were not leaders if we assume that there were other leaders whom enquiry has failed to reveal. I feel there are no grounds for such an assumption. I suggest that we must examine the case in the spirit of Addl. Secretary Home Dept.'s note of the 26th February in which he wrote 'The opinion formed of these four men is no doubt the result of the impression they created under examination or interrogation and even if the "material" against them may not in all cases seem very convincing, we cannot lightly reject the advice of the responsible military authorities'.

4 War Department therefore concur in the view of the DMI in the case of these men. Home Department will no doubt consult DIB; and we should be glad to know their views in the light of remarks. I do not think we need refer the matter to the War member until this has been done.

(P. Mason)
Joint Secretary
20.11.44

Home Dept. (Sir R. Tottenham)

Will D.S. (I) please see notes from p. 39 in conjunction with Addl.'s note of 28/9/44. [Notings above -- Ed.]

The file might go to D.I.B. for an opinion but the present position appears to be that we have asked for further information, which is not available yet, and it is doubtful whether D.I.B. need be worried at this juncture.

(G.A.T. Shaw)
22/11

I think this case may go up with the first batch to be submitted to H.M. in accordance with his recent orders.

Signed
23.11.44

U.S.(I)

Resubmitted.

(G.A.T. Shaw)
28/11

The existing orders will continue in force until 5-4-45. Therefore there is no necessity to review the cases at present. But please see my note of 28-9-44 and D.M.I.'s note of Nov. 16. I think we may simply ask for a further review from D.M.I. by March 1st.

R. Tottenham
4/12

This case concerns 3 men of the 1/15th Punjab Regt. Hav. Ujagar Singh, L/NK Piara Singh, and Sep. Nazar Singh. We have practically no information regarding the reasons why the military authorities require these men's detention... There was apparently an attempt on the life of one Hav. Hazara Singh but what the motives of that murder were we do not know. In the case of the first two we have some vague allegations of their having had some political contacts of having been friendly with a Havildar who deserted to the Japanese. All that I can find against Nazar Singh, except that he deserted from one unit and joined another is that he is suspected of having written an anonymous letter and of having been concerned in the attempt to murder the Havildar.

2. On 28th September further information was asked for but none has been forthcoming. It must be clearly understood that Home Department cannot agree to keep people indefinitely in detention on vague information of this sort.

3. In the circumstances Hazara Singh and Piara Singh may remain in detention till their orders expire on 5-4-45. If no further information of a reliable and serious nature is forthcoming by then they will be released. Nothing that we have against Nazar Singh justifies his further detention. He should be released at once. It does not seem necessary to apply any restrictions.

(R.F. Mudie)
Home Member 21.12.44.

Addl. Secy.

246: Extracts from Fortnightly Report from C.P. & Berar for the second half of September 1944

File No. 18/9/46 – Home Poll (I)
[NAI]

In another case of contempt of court, the High Court censured the Inspector-General of Prisons for failure to forward a petition addressed to the court by a prisoner who had been convicted for hunger striking in jail.



247 Extracts from Fortnightly Report from C.P. & Berar for the second half of September 1944

File No. 18/9/44 - Home Poll (I)
[NAI]

The High Court, on a *habeas corpus* application, directed the release of two men arrested under Defence Rule 129 for suspected complicity in underground Congress Socialist Party activities connected with a political dacoity in the Khandesh district of the Bombay Presidency. The order of the court ran into 80 typed pages and is being examined.

248: Political agent, Eastern Rajputana state to the Dewan of Bundi - Congress disturbances

Bharatpur Agency (Eastern Rajputana States) Bundi State - File No. 50
[Rajasthan State Archives]

To
The Dewan,
Bundi State

Memorandum No. 1570/70-P/42

Dated Camp Abu, the 23rd September 1944.

In view of the rumours that have been circulating about the possibility of underground Congress workers surrendering themselves to the authorities, the Government of India thought it advisable to examine the position in respect of detention orders issued during the 1942-43 Disturbances which remained unserved owing to the fact that the person against whom they were directed had absconded.

2. Such orders of course continued in force when Ordinance No. III of 1944 was promulgated, by virtue of section 6 of the Ordinance. The Government of India are however advised that, even though they remained unexecuted, the provisions of section 9 of Ordinance No. III must be held to apply; that is to say, any such order that was not extended before July 15th expired on that date.

3. In view of the above, the State will no doubt examine the position with regard to persons who have evaded detention by absconding and, if the old orders have not been extended, will issue fresh orders of detention in cases where they are considered necessary.

Political Agent,
Eastern Rajputana States

249: Vimlabai Deshpande w/o Purushottam Yeshwant Deshpande* (Applicant) v. Emperor [Bose* and Sen* J.J. (20 September 1944)]

AIR, Vol. 32, 1945, Nagpur, p. 8

T.J. Kedar and T.L. Sheode (in 70) and T.L. Sheode and G.J. Ghate (in 72) — for Applicant.
M. Hidayatullah,* Advocate-General (in both) — for the Crown.

Order

This order will also govern Miscellaneous criminal case No. 72 of 1944. The cases arise out of applications under S.491 (1), Criminal P.C. The applications are in respect of Purushottam Yeshwant Deshpande* and Yeshwant Vishnu Lele. In order to appreciate the points involved, it will be necessary to set out a few relevant facts from the applications and the affidavits which support them. Purushottam Yeshwant Deshpande is an Advocate of the High Court. He is also an Editor of the *Bhavitavya* a Marathi Weekly which is printed by the Independent Press. He lives in Craddock town and the office of the *Bhavitavya* is situated in the adjacent block. W.G. Sheorey, is the Editor, Printer and Publisher of the *Independent*, an English Weekly. He is also the Printer of the *Bhavitavya*. He lives in a house on the Jail Road in the compound of which is situated the office of the *Independent* and the press in which it is printed. One Inamdar was employed as a clerk in the *Bhavitavya* office but he left service in May 1944. On 21st August 1944, at about 6.50 a.m. Mr R.K. Misra, Additional District Magistrate, Nagpur, accompanied by several police officers and a posse of constables, surrounded the residence of Deshpande in Congress Nagar and searched the house and the office of the *Bhavitavya* till 1.30 p.m. and seized certain articles. During the course of the search, the police took down the numbers of certain 100 rupee notes. After the search the party left and instructed Deshpande to attend the Sitabuldi Police Station at 3 p.m. He went to the Police Station again and was interrogated by the police. He was then arrested and put in the police lock-up at Sitabuldi. He was not informed why he was arrested nor was he told what the charges against him was.

On 22nd August 1944, which was a holiday on account of Ganesh Chaturthi, Deshpande was removed to the police lock-up in the compound of the District Magistrate's Court and kept there for the whole day. In the afternoon, at about 5 p.m. he was removed to the Central Jail at Nagpur. A report was published in the *Hitavada* of 22nd August 1944 about the searches and arrests made on that date. The relevant portion of the reports is reproduced below:

It is reported that: simultaneous search were carried out at Wardha also and some five rupee notes were seized.

These searches are stated to be connected with an armed dacoity alleged to have been committed in East Khandesh some time in April last. . . . The persons connected with the dacoity are still absconding and the search is stated to have been made with a view to catching the absconders.

Waman Venkatesh Deshpande, a nephew of the Deshpande whose case we are considering was questioned by a police officer regarding Inamdar, his visitors and his present whereabouts. Deshpande informed the officer that Inamdar was at one time employed as a clerk in the *Bhavitavya* Office but that he left some time in May 1944. On 23rd August 1944, at about

10.15 a.m., two persons said to be police officers from Bombay, went to the house of Purushottam Deshpande and asked his wife about Inamdar and his friends. On the same day, 23rd August 1944, Mr V.K. Ringe, an Advocate of this court, was instructed by Deshpande's wife to see Deshpande in jail in order to obtain necessary facts from him to enable an application for bail to be made, but the Superintendent, Central Jail, Nagpur, refused to grant an interview on the ground that Deshpande was detained under R.129, Defence of India Rules. Then, on 25th August 1944, Deshpande's wife, Mrs Vimalabai Deshpande, filed the present application under S.491 (1) (b), Criminal P.C. praying that he be set a liberty as his detention was illegal and improper. This application was supported by an affidavit sworn by Waman Venkatesh Deshpande, his nephew. Relevant paragraphs from the application are reproduced below:

12. That from the nature of the inquiry by the Police and from the report in the *Hitarada* it appears that Bombay Police are investigating into an offence of dacoity and are trying to trace the offenders. The enquiries regarding Inamdar suggest an inference that the police suspect that the said Inamdar who was probably a suspect in the eyes of the police was harboured in the *Bhavlatrya* office.

14. That searches and enquiries by the police having been ostensibly made in connection with an attempt to trace the offenders in a dacoity alleged to have been committed in Bombay Presidency, the arrest of the applicant's husband ought to have been made under the provisions of the Criminal Procedure Code. But it appears that R.129, Defence of India Rules has been deliberately and in utter want of good faith used in order to prevent Mr Deshpande from pursuing the ordinary legal remedies and to deprive him of his ordinary legal rights. This is an abuse of the Defence of India Act and the rules framed thereunder.

15. That the arrest of Mr Deshpande under R.129, Defence of India Rules is a gross abuse of powers by the authorities, malicious and a fraud upon the law.'

These paragraphs specifically challenge the detention as illegal and improper on the ground that there was utter want of good faith, gross abuse of power and a fraud upon the law. The application also complained that a request for an interview with counsel had been refused. On 28th August 1944 this Court directed issue of notice of the application to the opposite party for a date to be fixed in office. The Superintendent, Central Jail Nagpur, was further directed to produce a copy of the warrant or order under which Deshpande was detained. The office fixed the hearing for 11th September 1944. On the same day, 28th August 1944, Waman Venkatesh Deshpande filed an affidavit stating that his uncle had been taken from the Central Jail to the lock-up of the Police Station in the District court compound on 27th August 1944 and that he was being detained in police custody. He stated that he believed that he had been kept there continuously from 27th August 1944 for purposes of interrogation. On 30th August 1944, another application was filed in this Court, seeking information from the Crown, or the Provincial Government, on certain points. We reproduce the relevant portions below:

'2. . . the following information is necessary in order to enable full and complete arguments to be advanced at the hearing: (i) who is the ultimate officer who made or directed the arrest? (ii) What report of the fact of arrest was made to the Provincial Government by the officer making the arrest? (iii) Has the Provincial Government passed any order on such report under sub. 2 of R. 129? and if so, what? (iv) If the Provincial Government has passed no order, has the officer who made the arrest passed any order in writing in respect of the commitment of arrested person to custody? If so, what? (v) Is there any general or special order of Provincial Government about the commitment of the arrested

person to custody? If so what? (vi) What is the purpose of transferring the applicant's husband to the lock-up in the compound of the District court?

3. . . . The hearing of the case in which the applicant urges that the arrest has been made by misusing the powers given by the Defence of India Rules should take place before the end of the first period.

4. . . . The applicant's husband has been transferred to the lock-up in the compound of the District court from the jail. . . . The purpose of the transfer is not known to the applicant. Presumably it is in connection with an inquiry into an offence under the Penal code and in order to enable the Police officer to have facilities of interrogation.

5. The applicant thinks it necessary that since interview by a lawyer was not permitted, the applicant's husband should be ordered to be produced before this Honourable Court to enable the Court to know all the circumstances about the arrest and detention.

6. That if this Honourable Court so decides, it may direct the Provincial Government to allow a lawyer to have an interview with Mr P.Y. Deshpande before the date of hearing.

7. The transfer of Mr P.Y. Deshpande from the Jail to the lock up and his continued detention there have given rise to a grave apprehension in the mind of the applicant. The applicant's husband is not in robust health and the transfer to the lock-up and detention there would certainly cause mental torture to him which will inevitably undermine his health. There being no restriction on the visits of the Police officers as regards the times and the periods the applicant's husband might be kept without sleep for days and this would amount to physical torture also. The applicant feels that detention in jail is the lesser of the two evils so long as detention continues.

8. The applicant prays for the following reliefs:

- (a) The Crown or the Provincial Government be ordered to apply the information specified in paragraph 2 of this petition. . . .
- (d) A lawyer of Mr P.Y. Deshpande should be permitted to have an interview with Mr P.Y. Deshpande at the place of his detention.

This application came up for hearing before a bench composed of Hemeon J. and one of us, Bose J., on 1st September 1944. An early hearing was asked for on the ground that the matter was urgent because of the detention in police custody. A complaint was also made in argument that interviews with counsel had not been granted. As to this, Bose J. remarked that there was no longer any difficulty about legal interviews. Notice was directed to issue to the Crown and the matter was fixed for hearing at 11 a.m. on 4th September 1944. The learned Advocate General happened to be present in Court in connexion with another case and he was told informally that the matter which would be considered on the 4th was the question of detention in police custody rather than jail custody. Counsel on both sides were told that the merits of the application would be considered on the 11th along with the application under S.491 (1) which had already been fixed for that date. But in order that the Provincial Government might have an opportunity of considering all the points raised, the order was couched in general terms and was as follows:

Issue notice to the Crown and in duplicate to the Legal Secretary to the Provincial Government to show cause of (this is a slip for 'against') the application dated 30-8-44. Three copies to be supplied to the Advocate General today. The case will be heard on Monday at 11 a.m. (4.9.44.)

On 4th September 1944, the learned Advocate-General filed a copy of an order of the Provincial Government dated 26th August 1944, directing that Deshpande be detained in police custody during the remaining period of his detention of 15 days expiring on 4th September 1944, and stated that there might not be a fresh extension of the period of detention

and that Deshpande might be released. Accordingly the case was fixed for 5th September 1944 instead of being taken up on the 4th. Complaint was however still made that no legal interviews had been sanctioned and we were asked to pass orders regarding this. We told the learned Advocate General to look into the matter and to let us know the position on the following day at 11 a.m.

On the following day, 5th September 1944, the matter was taken up at 11 a.m. Counsel complained bitterly that they were in an exceedingly difficult position because no orders regarding an interview with the detenus had been passed and accordingly it was very difficult for them to set out the necessary facts in the absence of instructions from Deshpande himself. We asked the learned Advocate-General for an explanation and he assured us that after I.L.R. (1913) Nag.154 there was no longer any difficulty about interviews. He said that his instructions were that in Ringe's case Ringe did not even wait for an answer. He simply went to the jail, asked for an interview, and walked away again. This does not sound likely to us. But that apart we have an affidavit before us sworn by Deshpande's nephew who was present in person and who swears to the matter to his personal knowledge, that an interview was refused on the ground that Deshpande was detained under R.129. There is no affidavit in reply. The complaint about this was made on 28th August 1944, and was repeated on 1st September 1944 and on 4th September 1944. So there was ample time for the Provincial Government to make an affidavit in reply, particularly as both of us stressed on 4th September 1944, that an adverse inference would be drawn against the Provincial Government if no affidavit refuting the facts set out in the affidavits before us was filed. In the circumstances we can only conclude that the allegations in W.V. Deshpande's affidavit are true.

The next excuse the learned Advocate-General made on behalf of the Provincial Government was that no panel of names had been supplied to Government and that the understanding reached after Prabhakar 'Tare' case was that a panel of names should be supplied so that Government might choose from among the panel. He also said that Deshpande had not asked for an interview but that his wife had made the application. We pointed out that four senior members of the High Court Bar were appearing in the case and that surely by now Government could have made up its mind as to which it would select, or if it considered them all undesirable, could have made alternative proposals.

The Advocates appearing in Deshpande's case are Dr T.J. Kedar, Mr T.L. Sheode, Mr M. Adhikari and Mr B.L. Gupta. They filed their memorandum of appearance on 24th August 1944, and the application of 30th August of which copies were supplied to the Advocate General by the orders of this court, is signed by Messrs Adhikari and Gupta. Messrs Kedar, Adhikari and Sheode appeared on 1st September 1944. These are counsel of eminence in the profession and of status. Dr T.J. Kedar is one of the leaders of the Bar with over 35 years practice. He was Vice-Chancellor of the Nagpur University for six years and as such was in honorary command of the University Training Corps. He was also a Minister for some time and has been a member of the Provincial Legislature for many years. Mr T.L. Sheode is the President of the High Court Bar Association and was formerly a member of the Bar Council. He is one of the leaders of the Bar and has put in over 34 years of practice. Mr Adhikari is a senior lawyer of over 24 years practice and Mr Gupta has put in over 21 years of practice and is a Lecturer in the University College of Law. What possible objection could there have been to one of these gentlemen being granted an interview? And in fact no objection was made. On the contrary we were repeatedly assured that no obstacles would be

placed in the way of an interview. We told the Advocate-General that we would give the Provincial Government time till 4 p.m. to make up its mind.

At 4 p.m. the learned Advocate-General again assured us that there would be no trouble. We then asked him which lawyer was to be permitted to see Deshpande. He replied that an application regarding this should be made to the District Superintendent of Police as he was now in charge of the prisoner. On this we were sharp with him and told him that the Provincial Government must choose immediately between Messrs. Kedar and Sheode and that unless it did so we would either direct Deshpande to be brought before us and permit him to interview any counsel he chose or release him altogether. On this the learned Advocate-General stated that his instructions were that there would be no objection to either Dr Kedar or Mr Sheode interviewing Deshpande. We accordingly directed that an interview be granted to Mr Sheode.

This is a deplorable attitude, unbecoming a Provincial Government. We could have appreciated a straightforward stand to the effect that under the Defence of India Act and Rules no interviews need be granted and that is a matter which lies in the sole and exclusive province of the Provincial Government. We could have understood the Crown seeking to make this or any other case a test case, and asking for a ruling so that one side or the other might test its validity before a higher tribunal—either the Federal Court or the Privy Council. We could have understood a request for a reference to a Full Bench. All that would have been candid and wholly proper. These are difficult times and the authorities torn between the stress and strain of war demands and the normal calls of peace time government, have unenviable duties to discharge. They are armed with special powers under an Act and rules which judges trained to the law find it difficult and perplexing to construe. Opinions differ widely about them — even judicial opinion — and strong views are held on both sides as the powerful dissenting judgments of Lord Atkin in (1941) 3 ALL E.R. 335 and Lord Shaw in Halliday's show. No judge would wish to be harsh or ungenerous in his criticisms of those who are called upon to administer these special and perplexing laws. But judges on their part are entitled to candour and frankness when the matter comes before them and they are entitled to expect that their decisions will be respected until they are set aside by Legislature or higher authority. They cannot allow the Court to be trifled with. What we cannot understand in this case is the repeated assurance that no obstacle would be placed in the way and then find some fresh obstruction at every stage.

The first complaint about interviews was made in the application of 25th August Notice of this was issued to the Crown. The complaint was repeated in the application of the 30th. It was again repeated in argument on 1st September in the presence of the Advocate General, who though not appearing on that date was present in Court and was given informal notice of the application by the Judges and more was supplied with three copies of the application at his express request. This application is signed by Messrs. Adhikari and Gupta. It expressly asks for an interview. the counsel who appeared and were present in Court were Messrs. Kedar, Adhikari and Sheode. The counsel who argued the application was Dr Kedar with Mr T.L. Sheode assisting him. Whatever doubts may have existed previously there could have been no doubt on that date either about the identity of counsel or about the fact that an interview was wanted. The complaint was again repeated in argument at 11 a.m. on 4th September—this time with considerable bitterness. Dr Kedar and Mr Sheode argued the application. The Crown had three days to consider its attitude. In spite of this we allowed another 24 hours to enable the Crown to consider the matter still further. Even then nothing had been done at 11 a.m. on the morning of the 5th and in spite of the fact that the Crown

had before it the names of four senior lawyers of this court it contended that no panel of names had been furnished, and contended that the application was by Deshpande's wife and not by Deshpande himself. Even then we were forbearing and told the learned Advocate-General that these four senior counsel with two leaders of the Bar among them could be regarded as the panel and gave the Provincial Government time till 4 p.m. either to choose between them or furnish an alternative or (*sic*) names. And what were we told at 4 p.m.? After repeated assurances at each stage that no disrespect was intended and that every reasonable facility would be afforded we were told that an application for an interview should be made to the District Superintendent of Police.

Judicial patience and temper wear thin in such circumstances. This court, having negotiated with the Provincial Government direct through its Advocate-General regarding this request for permission to interview Deshpande, having allowed adjournments in the face of strong protest by the other side because of the assurances given, having furnished the Crown at its request, with a panel of four names consisting of two of the leaders of the Bar and two advocates of long standing and experience even though this panel of names had been before the Provincial Government for at least three days together with an application expressly asking for an interview, is told at the end of it all that an application to the District Superintendent of Police is now necessary. There was no assurance that the application would be granted. This can only be described as deplorable. One would have thought that if an interview were to be allowed at all that the more dignified course, quite apart from considerations of straightforwardness and frankness, would have been to assent to the position, however unwelcome with good grace from the start instead of trifling with the Court's time and patience and inviting avoidable criticism and adverse comment.

And all this was done to deprive a man of a little legal advice so that he might defend his liberty. All done in the name of public safety and the efficient prosecution of the war. Is the Realm really in such desperate straits? Are the war efforts really hampered or endangered if men are allowed legal advice to enable them to defend their liberties? We have certainly seen no evidence of it, nor do we believe that that can be possible. We have a more robust faith in the might of Allied arms. But if it does, or is likely to, then why not frankly and openly take away these rights and liberties by legislation? That is done elsewhere, particularly in countries with which we are at war. Why not here? After all the safety of the Realm is the paramount consideration. And if it is done it will be our duty to give effect to such laws however harsh or oppressive they may be. But if it is not done and if remnants of liberty are still left to the subject, then we cannot allow this Court to be made a mockery and its proceedings a farce. So long as the law says as it indubitably does that a man may defend his liberties in this Court in given circumstances, however restricted, we cannot allow the executive to deprive him of those rights and force us to conduct our proceedings in a manner which has been characterized by the Privy Council as opposed to natural justice—certainly opposed to the British justice which is administered in this court in His Majesty's name. Even the House of Lords in (1941) 3 ALL. E.R.338 said that an attempt to try an issue without a full and fair hearing would be 'startling', a 'fantastic result', and a 'travesty of a trial'. The point was also considered in I.L.R. (1943) Nag. 154 at p. 162.

The claims of the Crown are dangerous claims. What we decide today for A will ensure tomorrow for B. Even when this Act and its rules have gone other laws may take their place and the principles which we lay down now will live on. Other Governments with other views may come into being. Of course if that was the intention and meaning of those who framed

this Act and its rules, and if that is the interpretation which the words used bear, then our duty is plain. But there is a human side to all laws, and in a matter of such fundamental importance we would require strong and indisputable evidence to convince us that that is what the Act and the rules import. Nor can it be forgotten that in this case a wife is seeking desperately for redress for her husband. And what is she told? — that her application is of no avail because her husband has made none. She is not allowed to find out from him what his wishes are and she is not even told that he does not wish to make an application. And in any event how can she know? How can she be sure that precious time is not being wasted while her husband's application is being bandied about from jailor to Magistrate, from Magistrate to jailor, from jailor to Secretariat, and from Secretariat back to jailor for oblivion in his files secure from the piercing scrutiny of this Court? That did not happen here. But it has happened. (See Misc. Cri. Case No. 47 of 1944) It might and will happen again if Judges shrink from their duty and relax their vigilance. And anyway, how can she know that it did not, seeing that it has.

This vexed question of interviews was thrashed out in I.L.R. (1943) Nag.154 decided in December 1942, and so far as this province is concerned the decision is that they must be granted. We were given to understand sometime ago that this principle had been accepted and that a *modus operandi* had been agreed upon. As far as we know no High Court has decided that legal advice can be wholly withheld. the only difference of opinion that we are aware of lies in the procedure to be followed. In the Bombay case, reported in I.L.R. (1943) Bom.433 at p. 439 the detenu was produced in Court and was permitted to interview his legal advisers there. In our view it is more convenient, and saves time and expense and trouble all round to leave this in the hands of Government.

On the Nagpur view Government is given wide latitude regarding the counsel whom the detenu may see and is afforded scope for regulating the place and manner of the interview. I can take all proper precautions against undesirable practices. On the other view it would be necessary in each case to have detenus from all over the province brought here every time an application is made. The learned Bombay Judges are agreed that the good faith of a detention can be challenged, and if challenged, that it must be enquired into. But how is any man to set forth his case if he is not allowed either to come in person to plead his own cause or to instruct any legal adviser who can do that for him? Once the principle is conceded that those orders can be challenged on certain grounds it becomes inevitable that means must be devised to enable this to be done effectively. No Court has yet held that there can never be any challenge. Even the House of Lords has conceded that there can and they have gone as far, in (1941) 3 ALL E.R. 338 as any court has yet gone in a matter touching the liberty of the subject. In our opinion the view taken in I.L.R. (1943) Nag. 154¹ is the most convenient all round. But whether that be so or not, that is the considered view of this Court and it must be followed until set right by higher authority, or overruled by a Full Bench. we draw attention in this regard to the observations of Lord Reading C.J. in (1916) 1 K B. 595 at p. 610:

This is the King's court: we sit here to administer justice and to interpret the laws of the realm in the King's name. It is respectful and proper to assume that once the law is declared by a competent judicial authority it will be followed by the Crown.

After the decision in I.L.R. (1943) Nag. 154 any refusal in this province to grant an interview along the lines laid down there: or to afford a detenu reasonable facilities for access to legal advice, or any attempts to place obstacles in his way, will amount to an abuse of power and

might even justify an order for immediate release: See also I.L.R. (1944) Nag. 629 at pp. 636, 637. To return now to the facts. When the case was taken up on the 5th the learned Advocate General produced a copy of another order of the Provincial Government dated 2nd September 1944 directing that P.Y. Deshpande be detained in police custody for a further period of fifteen days from 5th September 1944. Mr Sheode had the long sought' for interview on the 5th. The purport of the interview is set out in the affidavit of Waman Venkatesh Deshpande dated 8th September 1944. The relevant portions are reproduced below:

- (i) The local police and the Bombay CID police interrogated the detenu only about some dacoity alleged to have taken place in the Bombay Presidency, particularly with reference to one Inamdar, who was in his (detenu's) service as a clerk in the *Bhavitavya* office and who left his service in May 1944 last. . . . The detenu was further asked whether he knew the whereabouts of the said Inamdar and about his (Inamdar's) friends and associates alleged to be connected with the aforesaid dacoity.
- (ii) All these interrogations continued both in jail and in the lock-up for about 6 or 7 days and since the last 3 or 4 days all this is stopped altogether.
- (iii) Not a single question was ever put to the detenu at any time about war activities, or about other topic. In fact the whole enquiry centred round the dacoity affair only.
- (iv) Since the interrogation stopped, the detenu is required to wash his clothes, and clean the pots of his daily use, which formerly used to be done by his servant who took his meals to the lock-up and he has thus been deprived of the amenities which were allowed to him previously.

The case was taken up again on 11th September 1944. On that the learned Advocate-General filed a statement on behalf of the Provincial Government supported by an affidavit of Mr Jayaratnam, Chief Secretary to the Government of the Central Provinces and Berar, Political and Military Department. The statement is reproduced below:

1. Certain persons including Mr P.Y. Deshpande of Nagpur were arrested on the evening of 21st August 1944 under R.129, Defence of India Rules under the ultimate orders of the Deputy Inspector General of Police (Crime and Railways). The formal report of the arrest was received by the Provincial Government on 23rd August 1944.

2. The report was carefully considered by the Provincial Government and inter alia, revealed reasonable grounds for suspecting that Mr Deshpande was actively associated with certain persons engaged in underground activities calculated to prejudice the public safety and efficient prosecution of the war and in the opinion of the Provincial Government, there were reasons to suspect that they had already acted in a manner which had prejudiced the public safety.

3. On receipt of this report the Provincial Government passed an order under Defence of India Rule 129 (2) and (4) for Mr P.Y. Deshpande's detention temporarily in police custody for a period of 15 days. During this period he was also interrogated with regard to his activities and associates.

4. A further report was sent to the Provincial Government upon which the Provincial Government by an order dated 2nd September 1944 extended the period of detention by 15th days.

5. An order for search was issued under R.126 on 20th August 1944 by the District Magistrate Nagpur.

6. He was arrested under R.129 on the evening of 21st August 1944.

7. That the Provincial Government is advised that it is not the normal practice to make such statements on affidavit and that there are rules providing for the filing of affidavits.

8. That this Provincial Government is aware that affidavits are filed sometimes to assist the Courts in reaching a just and proper decision.

9. That this Provincial Government is anxious to give all reasonable assistance to this Honourable

Court may reach a just and proper decision. At the same time this Provincial Government is apprehensive that this action may not in future be accepted as a precedent requiring the Provincial Government to make returns on affidavit.

10. That the Provincial Government, subject to the reservation that this may not be treated as a precedent, is prepared if called upon to file forthwith an affidavit in support of the allegations of fact in paras 1 to 6 above, and particularly in defence to the wishes expressed by this Honourable Court.

Paragraphs 1 to 4 of the statement have been reproduced in identical terms in the affidavit, dated 10th September 1944, by Mr Jayaratnam, Chief Secretary to the Government of the Central Provinces and Berar, Political and Military Department. An ordinary typed copy of the order dated 22nd August 1944 passed by K.C. Diwakar, police officer, Sitabuldi, under R.129 (1), Defence of India Rules addressed to the Superintendent of Central Jail, Nagpur, committing Mr Deshpande to custody has been filed. The reason for the arrest has been stated thus:

I have arrested P.Y. Deshpande . . . whom I reasonably suspect of having acted, or of acting of being about to act in a manner prejudicial to the efficient prosecution of war.

This is a mechanical reproduction of R.129. Defence of India Rules and is open to the same criticism as was made by the Federal Court in 1944 F.C.R. 1 at p. 22 and in 1943 F.C.R. 1 at page 8. Judges dislike rubber stamps and are suspicious of them. We shall criticise this later. The order of Diwakar which has been filed in the case has not been attested as a true copy by any responsible officer of the Crown. It is necessary in *habeas corpus* cases that the order signed by the officer making the arrest and committing the person so arrested to custody should be filed: see the observations of Lord Green M.R. in (1942) 1 ALL E.R.373 at p. 377:

Now it transpired that no such order has ever been made by the Home Secretary: the document was false from beginning to end including the statement at the foot that it had been signed by the Home Secretary. This cynical piece of carelessness on the part of departmental officials was severely criticised by the Divisional Court . . . It appeared however that the Home Secretary had in fact made an order . . . for the detention of the applicant under Reg 18B (1A), although no copy of that order was given to the constable or the applicant. On the application of the applicant for a writ of *habeas corpus* a divisional Court consisting of Humphreys' Singleton and Tucker J.J. ordered his release.

Separate orders passed by Diwakar committing W.G. Sheorey and Yeshwant Vishnu Lele to custody have been filed. W.G. Sheorey and H.P. Deshpande have been released by the Provincial Government and the applications made on their behalf have been filed as the purpose of the applications has been served. It may be noted that in the above cases the same features occur as in P.Y. Deshpande's case, and the applications for their release were made on the same grounds.

Yeshwant Vishnu Lele is a teacher in the Khadi Vidyalaya of the All India Spinners' Association, Wardha Branch. He also assists the Secretary of the Gandhi Sewa Sangh Wardha Branch, and is a resident of Wardha. On 21st August 1944 at about 7 a.m. two Sub-Inspectors from Wardha and two police officers from Bombay accompanied by a Magistrate of Wardha, went to the place where Lele was residing and searched it. No warrant for the search was shown to him, nor was he informed about the purpose of the search. In the affidavit of Mrs Kamalabai w/o Dwarkanath Lele it is stated:

They only represented that the search was being taken in connexion with some dacoity in Bombay Presidency.

After a search of about 2 1/2 hours Lele was arrested and taken to Nagpur and was detained in the central Jail. an application for his release under S.491 (1) (b) Criminal P.C., has been filed by his brother's wife Mrs Kamalabai w/o Dwarkanath Lele. The grounds urged for release are the same as in Deshpande's case. The application is supported by her affidavit on 11th September 1944 after her lawyer Mr Gomkale had had an interview with Lele on 7th September 1944. The relevant portion of the affidavit is given below:

3 That since that date almost every day for about 8 to 10 hours he is being continuously questioned by various police officers about the alleged dacoity in the Bombay Presidency.

In para 4 of the affidavit, after referring to the threats given on the Hazaribagh Hills, it states:

From the above information received by the applicant from Mr Gomkale pleader, the applicant believes that Mr Lele has been transferred from Jail to the police lock-up to give a full and free scope to the police for prosecuting the investigation of the alleged offence of dacoity. It is submitted that this is an abuse of the provisions of R.129, Defence of India Rules.

In cases where the liberty of the subject is at stake, the responsibility of this Court is great and it has a right to expect that the Crown will place all the facts before it frankly or at any rate so much of the facts as will, without disclosing secret information, enable the court to reach a conclusion on the issues raised: see as to this the observations of Harries C.J. in ILR (1944) Lah.245 at p. 267.

This court has to determine whether Deshpande and Lele are illegally or improperly detained and whether the power exercised under R.129, Defence of India Rules was a fraud on the statute. There are matters which cannot be judicially determined unless the Court has material before it for arriving at a just and proper decision. This is recognised in the statement filed by the Provincial Government. Nevertheless it has made its affidavit under protest and seeks a ruling on the point. As to this it will be more convenient to consider the law first and then the procedure regarding affidavits afterwards. In considering the law the first thing to bear in mind is that the detentions we are considering here are under R.129, Defence of India rules and not under R.26. There is a fundamental difference between the two. But in order to understand the difference it will be necessary to consider certain other provisions of the Defence of India Act. Section 14 of the Act directs that: 'Save as otherwise expressly provided by or under this Act, the ordinary criminal and civil Courts shall continue to exercise jurisdiction'

And S.15 says.

Any authority or person acting in pursuance of this Act shall interfere with the avocations of life and the enjoyment of property as little as may be consistent with the purpose of ensuring the public safety and interest and the defence of British India.

Now these are two important and fundamental positions. Nothing is to be altered, no rights or liberties to be interfered with, no privileges withdrawn or curtailed, except as expressly provided by or under the Act. The ordinary laws are to continue to function except and in so far as they are expressly altered by or under the Act. More, even when they are altered the special powers conferred are to be used sparingly, and the ordinary lives and avocations of those proceeded against under the Act and its rules are to be interfered with as little as possible, and only to the extent consonant with the public safety and interest and the defence of British India. These conditions are express and restrictive. They are fundamental: The Act

and the rules must be construed in the light of them. The next question is, how far are the ordinary laws altered by the Defence of India Act and the rules? So far as present purposes are concerned, they do three things. First, they confer certain emergency powers for the purposes set out in S.2 and confer them on a number of persons and authorities, and they frame rules for carrying this into effect. Secondly they make a breach of these rules punishable as an offence and thus create special offences, and also make certain existing offences punishable in a special way. See Rr.34 (6) and 38 (5). Thirdly they confer certain powers of detention. These are conferred by Rr.26 and 129.

Now how are these special offences to be punished and what is the procedure to be followed by the tribunal trying them? Chapter 3 of the Act makes provision for the constitution of Special tribunals. No Special Tribunal affecting the present matters has been constituted. Therefore that part of the Act is of no avail here. Apart from Chap. 3, there is no provision as regards a tribunal for trying either these special offences, or any other existing offence, not is any procedure prescribed. Accordingly Ss.14 and 15 of the Act come into play and we are relegated to the ordinary law. The ordinary law is contained in S. 5. Criminal P.C. Under that

(1) All offences under the Indian Penal Code shall be investigated, inquired into, tried and otherwise dealt with according to the provisions hereinafter contained.

(2) All offences under any other law shall be investigated, inquired into, tried and otherwise dealt with accordingly to the same provisions but subject to any enactment for the time being in force, regulating the manner or place of investigating, inquiring into, trying or otherwise dealing with such offences.

Now Deshpande and Lele have either committed offences or they have not. If they have not, then there is no power to detain them or to keep them in custody except under Rr.26 and 129. If they have, then S.5. Criminal P.C. comes into play. If the offences they are accused of having committed are offences under the Penal Code the procedure regarding the investigation, inquiry and trial is the procedure prescribed by the code. If they are any of the special offences created by the Defence of India Act and its rules then sub s. (2) of S.5. Criminal P.C. operates. There is no special enactment regulating the manner of the investigation and inquiry and so again the procedure in the code applies. Rules 129 gives the Provincial Government special power to regulate the place of detention and the nature of the custody but not to regulate the manner of an investigation. Therefore, the procedure regulating the manner of the investigation is the procedure set out in the Criminal Procedure Code.

Under that Code any person accused of an offence has valuable rights. Under S.61 he cannot be kept in police custody for more than twenty-four hours without being produced before a Magistrate. If the police want to detain him longer they must obtain a special order from a Magistrate under S.167 and cannot obtain this unless they give reasons and make out a case for it; and the Magistrate cannot make the order unless he records his reasons for doing so. Then for each successive remand the police must make out a stronger and an ever stronger case. Also he has a right to ask for bail. And all these proceedings are under the general superintendent and control of the High Court. None of this is taken away or touched by the Act therefore all the old rights and privileges remain intact. The learned Advocate General relied on S.161 of the code. But that is restricted to 'an investigation under this Chapter'. That chapter embraces Ss.154 and 176 and includes S.167 to which we have just referred. It does not stand alone and must be read in its proper context along with the remaining provisions of the Code.

The provisions relating to detention are to be found in Rr.26 and 129, Defence of India Rules. But they relate to detention and to nothing else. They confer wide powers but even they have their limitation-limitations which we shall examine in a minute. Up to the present, all we need say is that if either the police or the Provincial Government desire an investigation into any offence, whether under the Penal Code or under the Defence of India Rules, they are bound to conduct their enquiry in accordance with the provisions of the Criminal Procedure code. They cannot call in aid their powers of detention and in the guise of exercising those powers conduct a secret investigation into a crime. If they have information that these detenus have committed crimes or offences they are not bound to investigate into them. They can rest content with detaining them under Rs 26 or 129 provided the matter falls within the ambit of those rules. But if they want an investigation they must proceed in accordance with the provisions of the Criminal Procedure code. If they do otherwise it is a fraud upon the Act and their action is not taken in good faith. They cannot make the best of both worlds.

[Omitted: Discussion of many cases in Britain and elsewhere on the question of good faith and satisfaction of the Provincial Government under Rule 26 of D.I.R -- Ed.]

That brings us to the next question: What powers have we got under S.491, Criminal P.C.? this was decided in I.L.R. (1943) Nag. 154 But as the decision there was provisional and as it related to R.26 and not to R. 129, we feel it incumbent on us to review the matter afresh. The power to issue a direction in the nature of a writ of habeas corpus is derived from S.491, Criminal P.C. which runs thus:

(1) Any High Court may, whenever it thinks fit, direct --

- (a) that a person within the limits of its appellate criminal jurisdiction be brought up before the Court to be dealt with according to law;
- (b) that a person illegally or improperly detained in public or private custody within such limits be set at liberty;

(2) the High Court may, from time to time, frame rules to regulate the procedure in cases under this section.

(3) Nothing in this section applies to persons detained under the Bengal State Prisoners Regulation 1815, Madras Regulation 2 of 1819, or Bombay Regulation 25 of 1827, or the State Prisoners Act, 1850, or the State Prisoners Act, 1850.

Under S 491 (2), Criminal P.C. no rules have been framed by this Court to regulate the procedure in cases under this section. The combined effect of R.1 (r) (vii), High Court Rules and R.4 is that these applications have to be heard by a Bench of two Judges. In accordance with these rules, these applications came for hearing and disposal before us. Under the several regulations mentioned in sub s (3) of S.491 the executive has been given power to detain a person indefinitely without any charge being formulated and without the person being placed on trial. A High Court has no power to issue a direction under S.491 in regard to persons detained under these regulations. But the present detentions are not under them. The rule of law expounded by Dicey in his book. 'Introduction to the study of the law of the Constitution', is the same in India as in England except for certain difference not relevant to the present matter. In England the executive has no power to detain a person indefinitely without trial in normal times, and the power of the High Court there to issue a writ of *habeas corpus* in respect of the person detained under the orders of the executive has not been taken away. The power

of the High Court in the Letters Patent is subject to the legislative powers of the local Legislature and of the Indian Legislature and also of the Governor-General in council under S.71, Government of India Act, and also of the Governor-General under S.72 of that Act. They can be amended and altered in all respects: see cl. 38, Letters Patent of the Nagpur High Court and S.223, Government of India Act. But they have not been altered. The power of the High court to issue a direction under S.491 has not been taken away in regard to persons detained under R.129, Defence of India Rules. Formerly, a High court in India had jurisdiction to issue the common law writ of *habeas corpus*: see 6 Beng. L.R. 391 at p. 459. Later, there were a series of legislative enactments and there was a difference of opinion in the High Courts on the point whether the power of the High Court to issue a common law writ of *habeas corpus* had been taken away.

The view taken in 45 Mad.922 was that the High Court in India had a right to issue the common law writ of *habeas corpus*. In 54 Cal.727 however, it was held that a High Court had no such power. The Madras High Court in a subsequent decision in I.L.R. (1939) Mad. 708 overruled their previous decision in 45 Mad. 922 and approved the decision in 54 Cal. 727. The matter is now settled by their Lordships of the Privy Council in I.L.R. (1939) Mad. 744 where it has been held that a High court has no power to issue the common law writ of *habeas corpus* in cases falling under S.491, Criminal P.C. But though a High Court in India now has no power to issue the common law writ of *habeas corpus* the problem which falls for decision under S.491 is the same. In I.L.R. (1943) Nag. 154 Pollock J. at p. 157 summarised the effect of the decision of the House of Lords in (1941) 3 ALL E.R.338 (1942) A.C. 284 and (1942) 111 L.J.K.B.475 in these terms:

The position is this, that the Court has no power to inquire into the grounds for the Home Secretary's having 'reasonable cause to believe' or 'being satisfied' within the meaning of the regulation and that the only matters upon which the Courts have power to inquire are the good faith of the Home Secretary, the authenticity of the order, and its application to the person detained.

At p. 159 he stated that the validity of the order of detention can be challenged on the ground that the person passing the order had no authority to pass it, and on the ground that he was not in fact satisfied that it was necessary to pass such an order and had acted in bad faith. If the person passing the order had authority to pass it and was in fact so satisfied then this Court cannot go into the grounds on which he was satisfied and the order cannot be called in question in this Court. Bose J. at page 160 observed:

Fundamentally, the principles which underlie both provision are the same. The object of both is to safeguard the liberty of the subject against excesses of the executive and against an abuse of power.'

And at page 170:

Allegations of want of good faith must be investigated in spite of the war. Other cases, some of less authority, also reach the same conclusion, though they use different language. Thus some call it an 'abuse of power' others a 'fraud upon the Act'.

At page 172:

It is to be observed that S.16 requires that the order be passed in the exercise of the power conferred by the Act and not merely in colourable exercise of such power. . . . It is not enough therefore that these orders should be passed under colour of the power conferred. They must be done in actual exercise of it and, as I read the law, no power is conferred to make such orders in bad faith, or in

abuse of the Act or for the purpose of effecting a fraud on the Act and consequently these issues must be investigated if they are raised.

In 60 Cal. 364 at pp. 376-7 Ramfry J. interpreted the word 'improperly' in S.491 to refer to cases in which although the forms of law have been observed there has been a fraud on an Act or an abuse of the powers given by the Legislature, and further stated:

The Courts can and in a proper case, must consider and determine the question whether there has been a fraud on an Act or an abuse of powers granted by the Legislature.

In 61 Cal. 197 [in 1934 in the case of Profulchandra Mitra V. the Commandant High Detention camp - Ed.] Amer Ali J. observed at page 214:

it is apparent that the English courts, in their anxiety to do justice between the subjects and executive, have asserted and maintained a residuary power to interfere, in certain cases, notwithstanding that the action taken is technically legal.

And later,

I agree with Mr Chaudhuri that under certain circumstances, the malice of a subordinate would tend to be imputed to the higher authorities.

And after referring to the case in (1916) 2 K.B. 742 stated at page 215:

This decision appears to me to indicate the type of case, to meet which the English courts have asserted jurisdiction i.e., cases involving some element of misuse of the statute itself.

In I.L.R. (1943) ALL.773¹ Iqbal Ahmad C.J. stated on page 775:

It is however clear that in cases in which even though the forms of law have been observed, the detention constitutes a clear fraud on an enactment or amounts to an abuse of the powers given to the executive by the Legislature, it is the duty of this Court to step in and to order that the person detained be set at liberty.

In (1916) 2 K. B. 742 Lord Reading C.J. observed at p. 749:

If we were of opinion that the powers were being misused, we should be able to deal with the matter. In other words, if it was clear that an act was done by the executive with the intention of misusing those powers this Court would have jurisdiction to deal with the matter:

Low J. at p. 752 observed:

I do not agree that if the executive were to come into this court and simply say a person is in our custody, and therefore the writ of *habeas corpus* does not apply because the custody is at the moment 'technically legal' the Court would have no power to consider the matter and if necessary deal with the application for the writ. In my judgment that answer from the Crown in reply to an application for the writ would not be sufficient if this Court were satisfied that what was really in contemplation was the exercise of an abuse of power. The arm of law in this country would have grown very short and the power of this Court very feeble, if it were subject to such a restriction in the exercise of its power to protect the liberty of the subject as that proposition involves.

In (1941) 3 ALL R.R.338 Viscount Maugham stated at p. 342:

It should be mentioned that the good faith of the Secretary of State is not challenged.

At page 348:

'The result is that there is no preliminary question of fact which can be submitted to the courts, and that in effect there is no appeal from the decision of the Secretary of State in these matters provided only that he acts in good faith.'

Lord Macmillan said at p. 364:

In the latter case it is for the Secretary of State alone to decide in the form of his own conscience whether he has a reasonable cause of belief, and he cannot if he has acted in good faith be called upon to disclose to anyone the facts and circumstances which have induced his belief, or to satisfy anyone but himself that these facts and circumstances constituted a reasonable cause of belief.

And Lord Wright said (p. 373):

The Judge adds, as is obvious, that the court might no doubt be called upon to decide questions of bona fides or mistaken identity, if they should ever arise.

Lord Romer said (p. 384):

if at the trial the Home Secretary gives rebutting evidence to the effect that, in his opinion, there were reasonable grounds for his belief, his statement, being merely a statement as to his opinion must necessarily be accepted unless it can be shown that he was not acting in good faith and the onus of showing this would be upon the plaintiff.

In (1941) 3 ALL. R.R. 383 Lord Macmillan observed at p. 396:

The result in my opinion is that the production of the Secretary of State's order, the authenticity and good faith of which are in no way impugned, constitutes a complete and peremptory answer to the appellant's application.

At p. 403 Lord Wright observed:

If the Home Secretary were to misrepresent the state of his mind that would be fraud . . .

In (1942) 1 ALL. E.R. 207 Viscount Caldecote L.C.J. observed at p. 209:

It would be a gross abuse of the powers given by Parliament to attempt to use them in order merely to suppress unpopular or obnoxious opinions. Regulations not required for any of the purposes stated in the Emergency Powers (Defence) Act, 1939, S.1 or in the amending Act of 1940 would indeed be ultra vires.

And Wrottesley J. (p. 213):

... the Court is entitled to be told what the applicant is entitled to be told, and in addition since the *Habeas corpus* Act, 1640, the court have power to supervise and control the Crown and its ministers in matters affecting the freedom of the subject.

In (1866) L.R. 1 H.L. 34 it was laid down that where persons have special powers conferred on them by Parliament for effecting a particular purpose they cannot be allowed to exercise those powers for any purpose of a collateral kind. In 1905 A.C. 496 Lord Macnaghton observed at p. 430 as follows:

There can be no question as to the law applicable to the case. It is well settled that a public body invited with statutory powers such as those conferred upon the corporation must take care not to exceed or abuse its powers. It must keep within the limits of the authority committed to it. It must act in good faith. And it must act reasonably. The last proposition is involved in the second, if not in the first.

So also in (1939) 2 K.B. 98 Scrutton L.J. said at page 145:

The Attorney General went so far as to argue that though the order violated all the statutory conditions was made without a scheme, or advertisement or public inquiry, once the order was made, it had the effect of a statute. I cannot agree. In my view an order which goes beyond the statutory conditions under which alone it can be made an order which for that reason the Minister could be prohibited from making, if he announced his intention of making it, is not an order which when made can . . . have statutory effect.

And Greer L.J. at p. 157:

If the Minister had, in the events that happened no power to make any order at all, his delegated power of legislation never came into existence.

And Slesser L.J. at p. 170:

I do not think that the mere fact that the minister describes the order as an order necessarily constitutes it one

The decision of the House of Lords in (1895) A.C. 328 can also be referred to. The propositions deducible from these cases are: (i) If a person exercises power conferred on him in bad faith, or for a collateral purposes, it is an abuse of the power and a fraud upon the statute and is not really an exercise of the power at all, and a Court can interfere with such colourable exercise of the power: and (ii) when the issue is raised that any particular order has been made in bad faith or for a collateral purpose and therefore not made in exercise of the power, the Court is bound to enquire into the facts; see 48 C.W.N. 766 at p. 762.

The question is: Is there anything in the Defence of India Act or the rules framed there under which has in any way modified these well settled propositions? Section 16, Defence of India Act 1939 is in these terms:

(1) No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

(2) Where an order purports to have been made and signed by any authority in exercise of any power conferred by or under this Act, a Court shall, within the meaning of the Indian Evidence Act, 1872, presume that such order was so made by that authority.

The presumption raised by sub-s. (2) of S.16 is a rebuttable one. Under S.4, Evidence Act, a Court shall presume that the order was so made until it is disproved. In I.L.R. (1943) Nag. 154 the order of detention under R.26, Defence of India Rules was passed by Mr Farquhar, Additional District Magistrate. With reference to such an order Pollock J. observed at page 157:

The first question to be decided is whether Mr Farquhar had power to pass such orders. If he had no such power, then the order was not made in exercise of the power conferred upon him under the Defence of India Rules and its validity could be challenged in this Court.

Bose J. said at page 172:

. . . Section 16 requires that the order be passed in the exercise of the power conferred by the Act and not merely in colourable exercise of such power.

In A.I.R. 1943 F.C.1 at page 9 the Federal Court held:

We are clearly of opinion that where the order is made under or by virtue of a rule which is invalid and therefore of no force or effect, the order is a nullity and S.16 (1) has no application.

The question there was whether the order of detention which was passed under R.26 which was in excess of the rule making power conferred under S.2 (2) (x) could be challenged. The decision was that S.16, Defence of India Act, was no bar and that the order of detention of Talpade² was declared to be illegal. In A.I.R. 1943 Cal. 377³ the question was whether the orders of detention passed under R.26, Defence of India Rules, which contained a recital that the Governor was satisfied that the detention of the persons mentioned in the orders was necessary for the purpose mentioned in them could be challenged. It was held that S.16, Defence of India Act, was no bar and the orders of detention were declared invalid as the Governor was not satisfied that their detention was necessary. This was affirmed by the Federal Court in (1944) F.C.R. 1. In I.L.R. (1943) Lah. 617 the Provincial Government passed a requisite order under R.75A, Defence of India Rules. It was held that S.16 of the Act did not preclude the order from being challenged on the ground that it was ultra vires or that it was not made *bona fide* but for some collateral purpose. The decision was that the order was ultra vires and that it had not been made in good faith but for a collateral purpose, that is for a purpose other than that for which the Legislature had invested the Provincial Government with extraordinary powers.

In 48 C.W. N. 766 the question for decision was whether the order passed by the Provincial government superseding the Howrah Municipality under sub r. 6) of R. 51 (f), Defence of India Rules, was invalid. The order contained a recital that the Governor was of opinion that it is necessary to supersede the Commissioners of the Howrah Municipality for ensuring the due maintenance of the vital services of the said local authority in the event of hostile attack. Das J. reviewed the case law on the subject and held that s.16, Defence of India Act, was passed in good faith, and held that the order was invalid as it was made for a purpose not contemplated by the Defence of India Act or the rules framed thereunder. Section 16, Defence of India Act, is thus no bar to an enquiry whether the order passed under the Defence of India Act or the rules framed thereunder is a valid order made in good faith and the question of good faith, when raised has to be decided by the Court: See I.L.R.(1944) Nag. 629 at pp. 636, 637.

In (1931) A.C. 662 Lord Atkin at p. 670 observed:

In accordance with British jurisprudence no member of the executive can interfere with the liberty or property of a British subject except on the condition that he can support the legality of his action before a Court of justice. And it is the tradition of British justice that judges should not shrink from deciding such issues in the face of the executive.

In (1941) 3 ALL E.R. 338 Lord Atkin at p. 361 observed:

In England amidst the clash of arms the laws are not silent. They may be changed, but they speak the same language in war as in peace. It has always been one of the pillars of freedom, one of the principles of liberty for which, on recent authority, we are now fighting that the judges are no respecters of persons, and stand between the subject and any attempted encroachments of his liberty by the executive, alert to see that any coercive action is justified in law.

The following passage from Dicey's Introduction to the Study of the Law of the Constitution, Edn.9, pp. 293 and 294 will illustrate the lengths to which the Courts will go to uphold the law.

Nothing better illustrates the noble energy with which judges have maintained the rule of regular law, even at period of revolutionary violence, than (1798) 27 St. Tr. 6614. In 1798, Wolfe Tone, an Irish rebel, took part in a French invasion of Ireland. The man-of-war in which he sailed was captured and Wolfe Tone was brought to trial before a Court Martial in Dublin. He was thereupon sentenced to be hanged. He held, however, no commission as an English officer, his only commission being one from the French Republic. On the morning when his execution was about to take place application was made to the Irish King's Bench for a writ of habeas corpus. The ground taken was that Wolfe Tone, not being a military person was not subject to punishment by a Court Martial or in effect that the officers who tried him were attempting illegally to enforce martial law. The Court of King's Bench at once granted the writ. When it is remembered that Wolfe Tone's substantial guilt was admitted, that the court was made up of judges who detested the rebels, and that in 1798 Ireland was in the midst of a revolutionary crisis, it will be remembered that no more splendid assertion of the supremacy of the law can be found than the protection of Wolfe Tone by the Irish Bench.

These traditions continue. In (1923) 92 L.J. K.B. 797 Scrutton L.J. said:

This case is not to be exercised less vigilantly because the subject whose liberty is in question may not be particularly meritorious. It is indeed one test of belief in principles if you apply them to cases in which you have no sympathy at all.

Those observations were quoted and acted on by this Court in I.L.R. (1940) Nag.1 at p. 10 and in I.L.R. (1940) Nag. 154 at p. 165 and were applied as recently as this month by this Bench in Misc. Cri. case No. 47 of 1944.

[Omitted: Description of the right of applying for a writ of *Habeas Corpus* evolved in English legal History — Ed.]

Both in England and in India fundamental rights are not guaranteed. The right to personal liberty of the subject and other rights flow from the ordinary laws of the land. The interference with personal liberty is remedied in England by a writ of *habeas corpus* and in India by an application under S.491 Criminal P.C. The Emergency Powers Defence Act of 1939 conferred powers on His Majesty to make such regulations as appear to him to be necessary or expedient for purposes connected with the defence of the realm. Under S.1 (2) (a) of the Act provision could be made for the detention of persons whose detention appeared to the Secretary of State expedient in the interest of public safety and the defence of the realm. In exercise of the powers thus conferred the King in council framed Regn. 18B. The text will be found reproduced in (1941) 3 All E.R. 338 at p. 341. This was the regulation which the House of Lords had to construe in that case and they showed that despite the wide powers conferred by that regulation the right to the writ still remained. All this shows that the right to the writ of habeas corpus and the corresponding guarantee, of liberty under S.491, Criminal P.C. are living realities and form one of the most fundamental and powerful forces in the constitution. It also shows with what extreme zealousness the right is guarded and upheld by the Courts. Our conclusion is that we have the power to take action under S.491. The rights conferred by that section have not been taken away or affected. That means that in this case we are entitled to enquire into the allegations made because first an issue of want of good faith is raised, and because secondly, in a matter under R.129 as contrasted with R.26, the Court can and must enquire into the reasonableness of the suspicion which justified the detention, the burden being on the Crown.

We now turn to the facts. The reason stated for the arrest of Deshpande and Lele in the

order of arrest is that the officer arresting reasonably suspects them of having acted or of acting, or of being about to act in a manner prejudicial to the efficient prosecution of war. The word 'or' before 'being about to act' is perfectly in order in the rule but it is out of place in the orders of detention. the police officer making that order has not stated whether the persons had acted in the past in a manner prejudicial to the efficient prosecution of war, or were acting at present, or were about to act in the future, in a manner prejudicial to the efficient prosecution of the war. There is no reference of any reasonable suspicion that these persons acted in a manner prejudicial to the public safety. The police officer who makes an arrest in pursuance of sub-r. (1) is required forthwith to report the fact of arrest to the Provincial Government. We take it that the order of detention under R.129 (4) Defence of India Rules, passed on 22nd August 1944, was made on the strength of such a report. On 26th August 1944, the Provincial Government directed that Deshpande be detained in police custody during the remaining period of his detention of 15 days expiring on 4th September 1944. On 2nd September 1944, an order directing Deshpande to be detained in police custody was extended for a further period of 15 days from 5th September 1944. In none of these orders is there any reference to the fact that P.Y. Deshpande has acted in any manner prejudicial to the public safety-not that such a reference would have been in place in such an order. But it serves to show that the orders of the Provincial Government were made on the basis of the police report, which of course is what is intended under the rule.

Under R.129 the power to arrest and detain is conferred on the police, or on any other officer of Government empowered in that behalf by general or special order of the central Government or the Provincial Government. It is not conferred on the Provincial Government. The powers of the Provincial Government are to be found in R.26. Under R. 129 all that the Provincial Government can do is to specify the place of detention and up to a limit of two months its duration. Therefore the only authority we are concerned with under R.129 is the police officer who made the detention, and it is for him to show that he had reasonable grounds for suspicion. Clearly he cannot discharge thatonus by merely asserting that he had reasonable grounds because that is the very question we have to decide. Under the law as we understand it, the Court is to be the judge of that and not the police officer. Therefore he must tell us what those grounds were and leave us to decide whether they are reasonable. That was the very point argued and decided in (1914) A.C. 808 by the House of Lords. That apart, in this particular case we have not even a prima facie guarantee that there is a reasonable suspicion. The alternative terms in which the order is couched shows that the police officer making the arrest did not know his own mind. He did not know what he suspected and floundered about in his order from one alternative to another. If one suspects that A has acted in a certain manner one says so. If the suspicion is that he is in addition about to act in that or a similar manner in the future again one says so and uses the word 'and' and not 'or'. The moment the 'or' is introduced it becomes patently apparent that no thought was given to the requirements of the rule and that a rubber stamp order was made. That will certainly not satisfy the condition of 'reasonable suspicion' which R.129 requires.

Incidentally this order has not been supported by an affidavit, and the burden being on the Crown the mere production of an order under R.129 is not enough. There must be proof. The only affidavit we have on the side of the Crown is one which tells us about the suspicions entertained by the Provincial Government, not by the police officer making the arrest. But what we have to determine here is what were his suspicions, and not the Provincial Government's. Turning next to the affidavit made by the Chief Secretary, when we examine its terms

it becomes more apparent than ever that the police officer making the order did not know what he suspected. As we have said, his order is confined to matter which will be 'prejudicial to the efficient prosecution of the war'. The affidavit of the Chief Secretary on the other hand, sets out that the material placed before the Provincial Government gave rise to the suspicion that Deshpande's activities were 'calculated to prejudice the public safety and the efficient prosecution of the war'. Now under R. 129 the Provincial Government can only act on the report of the police made under sub-r. (2). If the police had no material in which their opinion would have justified an order on the ground that the public safety was likely to be endangered how can the Provincial Government decide otherwise? Of course, the Provincial Government can act under R.26, but it does not choose to do so, it cannot decide *ex post facto* that the police officer making the arrest ought to have accepted matter which in the police officer's opinion would not have justified him in making the arrest. As we have said, all we can consider under R.129 is whether the police officer making the arrest had reasonable grounds for suspicion at the time of making the arrest and whether he in fact suspected. He seems to have entertained no suspicion on the score of public safety. This difference of opinion between the police officer and the Provincial Government in itself shows that there is room for a difference of view on the material set out in the report, and accordingly makes it all the more incumbent upon us to know what the grounds for the suspicions are.

As regards the question of public safety. In one sense every offence, however trivial, affects public safety—even some silly personal defamation or drunken brawl between a couple of inebriates. But that cannot be the connotation in which these words are used here. They import something much wider relating to the defence of the realm. A clue to the meaning of the words is to be obtained from part 10 of the Rules in the chapter headed 'Public Safety and Order'. They relate to matters like the holding of or taking part in public processions meetings or assemblies, and to trade disputes, hartals, etc., and to the wearing of unauthorized uniforms. The chapter is a preventive chapter and has no reference to offences committed in the past even if they be offences like dacoity. If Messrs Deshpande and Lelc are suspected of having committed an offence under the Penal Code, the investigation into the offence has to be in accordance with the provisions of the Criminal Procedure Code. If, however, they are suspected of having committed a prejudicial act within the meaning of R.34 (6), punishable under R.38 (5), Defence of India Rules, or of having committed any offence under those rules the investigation into them has to be conducted in accordance with the provisions of the Criminal Procedure code as no separate procedure has been provided for investigating an offence committed under the Defence of India Act. The procedure for investigating into an offence is regulated by Chap. 14. 53, 1501 to 176. Cr. P.C.

The learned Advocate-General contended that under S.161, Criminal P.C., a police officer has power to question any person supposed to be acquainted with the facts and circumstances of the case. 'Any person' in the section is wide enough to include an accused person: *see* 18 Pat. 234 and I.L.R. (1940) Nag. 232. Section 161 has to be read along with other provisions in the chapter. An accused has a right that he should be placed before a Magistrate within 24 hours of the arrest. The Magistrate has to decide whether a remand should be granted. If so on what conditions and for each successive remand a stronger case has to be made out by the prosecution. The accused is entitled to move for bail. All these rights are inter-related and the power of the police cannot be considered apart from the right which an accused person has. Undertrial prisoners are entitled to all reasonable facilities for interviewing or otherwise communicating either orally or in writing with their relatives friends and legal

advisers: *see* Jail Manual R.906 p. 253. These rights are not available if they are detained under Rule 129, Defence of India Rules. A copy of the order dated 22nd January 1944 giving instructions of the Provincial Government regarding the conditions to be applicable to all persons detained in police custody under Rule 129, Defence of India Rules, has been placed before us. Instructions 9 and 10 are reproduced below:

Interviews:

(9) (i) A prisoner shall not be permitted to have an interview with persons other than police officers except on the written order of the Superintendent.

(ii) . . . The Superintendent shall be competent subject to any special directions that may be issued by the Inspector General of Police to allow or refuse an interview. . . .

Police Interviews:

(10) Subject to the directions of the Inspector General of Police the Superintendent may by general or special order authorize any police officer, either singly or with another police officer and accompanied or unaccompanied by subordinate police officers, to interview any prisoner'.

If a police officer, for facility of carrying on an investigation unhampered and unrestricted detains an accused person, or a witness supposed to be acquainted with the facts and circumstances of the case under R.129, Defence of India Rules, that would be an abuse of the power conferred under R.129: *see* the judgment of Harries C.J. in A.I.R. 1944 Lah. 373 at p. 375.¹ It may be noted that there is no restriction as regards the time period and the number of interviews which a police officer is entitled to have with a detenu in a day. The complaint made here is that Deshpande has been subjected to continuous interrogation by the police for a number of days and there is no refutation of that allegation. The question is whether the police officer in question passed the order of detention under R.129, Defence of India Rules in good faith or whether the detention was made with a view to facilitate the investigation into a dacoity in East Khandesh unhampered and unrestricted by any of the provisions of the Criminal Procedure Code and was not made in bona fide exercise of the power. The affidavit and the application on behalf of Deshpande complained that no interview was allowed and that he was in the police lock-up instead of in jail.

This refusal to grant an interview or to afford facilities to the detenu to place in his case before the Court amounts to an abuse of power under the Defence of India Act and the rules framed thereunder and is an additional ground for suspecting the good faith of the authorities: *see* I.L.R. (1944) Nag.629 at p. 636. The complaint in the application was that the arrest and detention have been with a view to facilitating an investigation into a dacoity which took place in East Khandesh, and that the detention under R.129 was in utter want of good faith and was made to prevent Deshpande from pursuing his ordinary legal remedies and to deprive him of his ordinary legal rights. This, it was urged, is an abuse of the Defence of India Act and rules framed thereunder.

An affidavit was filed on 28th August 1944 to the effect that Deshpande was kept in police custody from 27th August for purposes of interrogation. On 30th August 1944 the applicant wanted information as to the purpose of transferring the applicant's husband to the lock-up in the compound of the District court and stated that the detention in jail was the lesser of the two evils so long as the detention continued. On 6th September 1944, after Mr Sheode had an interview with Deshpande, an affidavit was filed stating that the interrogations continued both in jail and in the lock-up for about 6 or 7 days. In spite of the definite and specific allegation that the order of detention was not made in good faith but for an ulterior purpose

in order to facilitate the police in carrying on an investigation into a dacoity the Provincial Government passed an order on the 26th placing him in police custody. The protest of the applicant was registered on 30th August, and in spite of that protest a fresh order was passed on 2nd September 1944 extending the period of detention in police custody for a further period of 15 days from 5th September 1944. The application filed on behalf of the Provincial Government and the affidavit sworn by the Chief Secretary lack details and particulars. They may be compared and contrasted with the affidavits and particulars furnished in (1941) 1 K.B.72.⁵ The order of the Home Secretary is at pp. 72-3, the particulars furnished by the Advisory committee under the Defence Regulations at pp. 73-4 and the affidavit of Sir John Anderson at pp. 75-6. A part of the affidavit of the Secretary of State in (1941) 2 All E.R.749 will be found at pp. 753 and 754. The affidavit filed by the Chief Secretary is open to the criticism which Stable J. made in (1941) 2 All E.R. 749 at p. 759.

An affidavit in stock form, applicable to all cases and, as Langton J., expressed it in a recent case, 'over the rubber stamp' is in my judgment, undesirable in almost any proceedings and most particularly undesirable in proceedings of this nature, where the liberty and reputation of the subject are involved and in which consequently particular individual attention must, as a matter of right be given to every relevant factor

This was cited with approval by Shearer J. in I.L.R. (1944) Pat. 252 at p. 258. The applicant made definite and specific allegations of fact, viz., that a dacoity was committed in East Khandesh some time in April last, that police officers from Bombay were investigating into the offence, that the arrests and searches were made with a view to find out the culprit and catch the absconders, that the police officers from Bombay had questioned Deshpande about Inamdar and his whereabouts and his associates, that no question was asked from Deshpande about the articles in *Bhavitavya* or about his activities in relation to the war and that the inquiries have been restricted to find out the whereabouts of Inamdar and his associates. These facts have not been denied either in the statement filed by the Provincial Government or in the affidavit of the Chief Secretary.

Paragraph 2 of the statement of the Provincial Government is cryptic and it is almost impossible to find out what is alleged against Deshpande. It is not asserted that Deshpande was engaged in underground activities calculated to prejudice the public safety and/or the efficient prosecution of war. The only allegation against him is that he was actively associated with persons who were engaged in such activities. But what kind of association? Innocent or otherwise? And what are the facts which lead to a conclusion that the association is an active one? The affidavit is curiously and studiously silent about this. How can we judge whether there is any association or not, and whether it is active, and whether it is innocent or otherwise, without being placed in possession of a single fact on which to form an opinion? In the English cases there were definite allegations made that the persons detained were members of the British Union of Fascists and the parts which they had taken and how their activities were calculated to endanger public safety were set out. We have a right to expect that statements made on behalf of the Provincial Government will be full and frank. The Provincial Government has undoubtedly a right to withhold its sources of information, as also the evidence on which the conclusion was reached. But it must state frankly matters on which there can be no question of secrecy, particularly when they have already been made public and have even been published in the papers. The statement studiously avoids any reference to the investigation which is being carried out by the police officers from Bombay in a dacoity which was committed

in East Kandesh. In our opinion the order of the Provincial Government placing Deshpande in police custody could not have been with a view to promote the efficient prosecution of war or to safeguard the public safety, but must have been with a view to afford facilities to the police officers to carry on the investigation into the offence which had already been committed and to find out the traces of Inamdar and his associates. Had the case been otherwise the Provincial Government would have taken the responsibility for the detention upon itself and would have acted under R.26. That in turn would have given Deshpande certain limited findings.

The police officer who arrested and ordered the detention has not filed any affidavit. The circumstances in the case leave no manner of doubt that the arrest and search were made with a view to trace the whereabouts of Inamdar and his associates and to investigate into the offence of dacoity which had been committed. Deshpande was placed in police custody in order to give police officers facilities for carrying on an investigation. The detention in police custody could not possibly have contributed to the efficient prosecution of the war or in any way to safeguard the public safety. In the case of Lele there is a definite statement that two police officers from Bombay searched his quarters and stated that the search was being made in connection with a dacoity in the Bombay Province. This has not been controverted by the Provincial Government. No statement or affidavit has been filed by the Government in Lele's case. The learned Advocate General submitted that the statement filed in Deshpande's case should be taken as a statement in this case also. But there is no reference at all to Lele in either the statement or the affidavit in Deshpande's case, accordingly neither can be read as applicable to Lele. If this was due to laxness then we say with Lord Wright in (1942) A.C. 284:

I feel very strongly that in a question like this affecting the liberty of the subject the greater care should be taken and the greatest correctness of procedure observed. Laxity is most reprehensible, whoever may have been responsible.

And with Lord Macmillan:

Nothing could be more unfortunate than that in a matter in which scrupulous accuracy is imperative the impression should be created that the safeguards prescribed for the protection of detained persons are carelessly observed and administered.

The circumstances in Lele's case also indicate that the order of detention by the police officer was not made in good faith in exercise of the powers for the purpose mentioned in the rule but that they were made with the ulterior purpose of facilitating the police investigation. That brings us to the question of affidavits. As we have said the Provincial Government filed its affidavits under protest and asked for a ruling. Affidavits have been filed in numerous cases in England as well as in India to justify detention . . .

[*Omitted: Discussion of these cases — Ed.*]

In the English case just cited a decision on a similar difficult question was obviated by the assistance of the Crown in making the affidavit. We were also anxious to obviate waste of time and energy and so asked for an affidavit. The matter is within the knowledge of the Provincial Government and a single sentence in the affidavit would have settled the question in two minutes and thus have obviated much tedious argument and tiring deliberation. Unfortunately, the affidavit did not make the point clear and adhered to the ambiguous formula 'the Provincial Government', which as we have said the Federal Court considered insufficient.

Fortunately, however, the learned Advocate-General was able to tell us that he had seen the files personally and could assure us that the files had been placed before His Excellency the Governor and that the orders were passed by His Excellency in person. Of course we at once accepted the learned Advocate-General's assurance, it having been made on personal knowledge from a personal inspection of the files and not merely on instructions. That has obviated hours of fruitless argument and consequent loss of time over a matter which, as it turns out, would have been purely academic seeing that His Excellency had in fact passed the orders. But the matter ought to have been cleared up in the affidavit. These 'rubber stamp' returns are open to objection, particularly an affidavit. The question about the necessity of filing an affidavit was considered by the House of Lords in (1942) A.C. 284 Lord Wright put the matter generally thus:

The guiding principle of *habeas corpus* is, as I have explained, that is *festinum remedium*. Hence there is a presumption against unnecessary affidavits.

As the learned Law Lord explains, the whole object of these proceedings is to make them expeditious, to keep them as free from technicality as possible, and to keep them as simple as possible. Accordingly, when there is nothing to enquire into, that is to say, when there is no question of fact to be examined, as was the case in (1942) A.C. 284 there is no need for an affidavit. As Lord Wright put it:

Until there emerges a dispute of fact into which the Court feels it should inquire, I think the defendant's statement is enough though no doubt if the Court is proceeding to enquire into the merits it may order affidavits

We do not think we can put the matter more concisely than that. But the point to note is that in all these cases — even in two cases after this decision, the Crown in its anxiety to assist the Court and to avoid any possible waste of time went out of its way to make affidavits even though the House of Lords itself had decided that affidavits were unnecessary. That is a refreshing contrast to the attitude here. It is not always easy to anticipate whether the Crown need answer the application once it has produced its order of detention. Therefore, even though it was not strictly necessary to do so it invariably produced an affidavit in the cases we have set forth; and that excellent tradition has been followed in certain Indian cases. That deals with the position when no issue of fact requiring an answer is raised. It is not necessary to file an affidavit in the first instance if the return is good on the face of it. But it is always wise to do so. It assists the Court. It avoids unnecessary waste of time and it obviates attacks on Government's good faith. Candor and frankness are always appreciated. But if an issue of fact is raised in the application then an affidavit in reply refuting the facts, or explaining them away, is always necessary, and should be filed along with the return so as to obviate unnecessary delay. Otherwise the truth of the facts alleged will normally be accepted.

[Omitted: Reference to Viscount Maugham's judgement in 1941 3, ALL ER 338 — Ed.]

In the present case issues of fact were raised. The good faith of the police and of the Provincial Government were expressly challenged and facts were set out which, if un rebutted and unexplained, were sufficient to support the allegations. An affidavit therefore was necessary and should have been filed from the start. In fact it is the complete absence of any refutation of these facts and the failure to explain them that leads us to conclude that the orders in these two cases were not made in good faith and that they are a fraud on the Defence of India Act

and its rules. We hold that the detentions of Purushottam Yeshwant Deshpande and Yeshwant Vishnu Lele are illegal and improper and direct that they be set at liberty forthwith. We wish to make it plain that the validity of R.129 was not questioned before us and accordingly we express no opinion about its intra vires character. After we had delivered judgment, but before we had signed it, the learned Advocate-General stated that we had misunderstood the position of the Provincial Government regarding the granting of interviews and asked us to embody the following explanation in our order. That we have pleasure in doing . . .

There has been misunderstanding on two points which I must clear,

(1) When I informed you Lordships that either Mr Kedar or Mr Sheorey could interview and they had to apply to the D.S.P. I meant to say that they had to get in touch with the D.S.P.

(2) I assured your Lordships that no interview was asked for by the prisoner and that no interview was refused. All the applications were to the High Court. The only request to the Government (i.e. jail authorities) being an application by Mr Ringe.

As this misunderstanding should, I think be removed I am drawing your Lordships' attention to it before the order is signed.

R.K.

Order accordingly.

1 In the case of Emperor v. Harishchandra.

2 Doc. 27

3 Doc. 33.

4 In the case of Dilbagh Singh v. Emperor, Lahore, 1944.

5 In the case of King v. Secretary of State for Home Affairs – this will be found in 1941 I.K. B, 72.

250: Tottenhams' affidavit – Additional Secretary empowered to authenticate action (end of September 1944)

File No. 44/52/44 – Home Poll (I)

[NAI]

In the High Court of Judicature at Lahore

Sardul Singh Caveeshar

versus

The Crown

Misc. Cr. Case No. of 1944.

I, Sir Richard Tottenham, of the Indian Civil Service, at present Secretary to the Government of India in the Home Department, make oath and state:

1. That I have personal knowledge and considerable experience of business and procedure, as well as the functions discharged by the higher officers in the Secretariat of the Government of India, and, in particular, in the Home Department of the Government of India.

2. That it is the practice in the Government of India for an 'Additional Secretary to be

appointed in any Department, if, by reason of any increase in the business of such Department, it appears to the Governor-General that an additional Secretary should be appointed.

3. That an Additional Secretary to the Government of India in any Department, e.g., in the Home Department, is entitled to exercise all the functions and to perform all the duties which a Secretary in that Department does or may do, and is, to all intents and purposes, a Secretary to the Government of India in that Department.

4. That as Additional Secretary in the Home Department at the material time, i.e., on the 9th March, 1942, I was a Secretary to the Government of India in the Home Department, and, as such, entitled to authenticate orders of the Governor General in Council.

Dated at New Delhi, this day of September, 1944.

Secretary to the Government of India.

Sworn this, the day of
September, 1944, by Sir
Richard Tottenham, I.C.S.,
Who is known to me personally.

Magistrate of the
First Class,
New Delhi.

251: Caveeshar's case

File No. 44/52/44 – Home Poll (I)
[NAI]

2.10.44

Observations

This is an application to the Lahore High Court under section 491 Cr.P.C. by Sardul Singh Caveeshar. The application will be heard on the 2nd of October, 1944. Learned Counsel is briefed to appear for the Central Government and to oppose the application.

2. On the 9th March, 1942, the Punjab Police arrested the applicant under Rule 129 of the D.I.R. at Lahore and detained him in the Lahore Fort. The Central Government, which had previously arranged with the Government of the Punjab for making the arrest, passed an order under Rule 26 (1) (b) of the D.I.R. on the 9th March, 1942, for detention of the applicant [enclosed towards the end of this document after Appendix No. III – Ed.] The order, which was signed by Sir Richard Tottenham, Additional Secretary in the Home Department of the Government of India, was duly served on the applicant. A copy of it is briefed. An affidavit has been filed in this case by Mr F.C. Bourne, Chief Secretary to Government, Punjab, and the second paragraph thereof, which is as follows, concerns the said detention order, dated the 9th March, 1942:

Para 2. The order of detention passed by the Central government is valid and was issued after the case of the petitioner had been carefully considered by the Central Government.

A copy of the affidavit is briefed herewith.¹

3. By the said order of the 9th March, 1942 [copy appended with this document] the Punjab Government also was empowered to determine from time to time the place and conditions of the applicant's detention (under Rule 26 (5) of the D.I.R.). On the 8th October, 1942, the applicant was transferred by the Punjab government from Lahore Fort to Campbellpore. (Vide the two orders of that date of which copies are attached).²

4. On the 24th March, 1943, the Punjab Government transferred the applicant from Campbellpore to Dharamsala. The order of the Punjab Government dated the 24th March, 1943, for detention of the applicant in the District Jail, Dharamsala, is briefed.³ Another order had been passed the same day by the Punjab Government cancelling the order for the applicant's detention at Campbellpore. A copy of that order also is briefed.⁴

5. Under section 6 of the Restriction and Detention Ordinance (III of 1944) the detention order passed by the Central Government on 9th March, 1942, must be deemed to have been passed under this Ordinance and was valid under section 9 thereof until 14th July, 1944.

6. On the 8th February, 1944, the Central Government informed the applicant by a notice (under section 7 of Ord. III of 1944) of the grounds of his detention and of his right to take a representation against the order of detention. A copy of the notice is briefed.⁵ The applicant made a representation⁶ which was duly considered by the Central Government which, however, decided to continue his detention and informed him accordingly on the 27th April, 1944. (A copy of the letter is briefed).⁷

7. On the 1st July, 1944, the Central Government passed an order directing that the detention order, dated the 9th March, 1942, should continue in force. This order was signed by Mr Vishnu Sahay, joint Secretary to the Government of India in the Home Department. It was duly served on the applicant. Its copy is attached. (This order is not mentioned in the application under section 491 CR. P.C. obviously because the petition was made on the 26th May, 1944, well before the date of the extension order)

8. The applicant challenges the validity of the Central Government's order, dated the 9th March, 1942, on the grounds stated below.

9. First, the applicant contends that the order (dated 9th March, 1942) was not signed by the proper authority. The order, as already stated, was an order of the Central Government under section 26 (1) (b) of the D.I.R. The expression 'Central Government' means, in that rule, the Governor-General in Council (see sub-clause (b) of clause 9 (ab) of section 3 of the General Clauses Act, 1897, and Rule 3 of the D.I.R.). Under section 40 (1) in Schedule Nine to the Government of India Act, 1935, orders of the Governor-General in Council 'shall be signed by a Secretary to the Government of India, or as the Governor-General in Council may direct, and, when so signed, shall not be called into question in any legal proceeding on the ground that they were not made duly by the Governor-General in Council'. The order, as already stated, was signed by an Additional Secretary to the Government of India. He was, learned Counsel will submit, 'a Secretary' to the Government of India within the meaning of section 40 (1) of the Ninth Schedule to the Government of India Act (and distinguishing prefixes like 'First', 'Second' or 'Additional' do not affect the fact that the person concerned is 'a Secretary to the Government of India'). Alternatively, learned Counsel will urge that under section 40 (1) of the Ninth Schedule, an order of the Governor-General in Council 'shall be signed by a Secretary . . . or otherwise as the Governor-General in Council may direct'. Such a general order exists, namely, Home Department Resolution No. 18/3/39-Public, dated the 28th July, 1939. It states that the Governor-General in Council is pleased to direct that orders and other proceedings

of the Governor-General in Council shall be signed by a Secretary, Joint Secretary, Deputy Secretary, Under Secretary or Assistant Secretary to the Government of India. If any point is made that the resolution does not mention an Additional Secretary, learned Counsel will submit that an Additional Secretary is as much a Secretary as an Additional Judge of the High Court is a Judge. If necessary, this fact can be established by an affidavit of the Home Secretary. It follows, therefore, that the order, dated 9th March, 1942, was signed in accordance with the provisions of section 40 (1) of Schedule 9 to the Government of India Act. Therefore, under the same section, it is not open to the applicant to contend that order was 'not duly made by the Governor-General in Council' (i.e., by the Central Government).

10. The Second ground of the applicant is that the order, dated 9th March, 1942, 'did not show that, before it was issued, the case had been properly considered by the authority concerned as required by law'. The law, however, does not require that an order under Rule 26 (1) (b) of the D.I.R. should contain any particular recital: see.

- (i) R.V. Home Secretary, Ex-parte Lees (1941) 1 K.B. 72 at p. 78; and
- (ii) R.V. Briton Prison (Governor) Ex-parte Pitt-Rivers (1942) A.E.L.R. 207.

However, the order, dated 9th March, 1942, *does* 'whereas the Central Government is satisfied with respect to the person known as Sardul Singh Caveeshar . . . ' which are in accord with the opening part of Rule 26 from this recital a presumption arises, under Sec 14, Indian Evidence Act, that what the recital says is correct (see in this connection).

- (1) Greens .s. The Secretary of State for Home Affairs, (1942), A.C. 284, at page.
- (2) Liversidge vs. Anderson (1942), A.C. 206, at page.
- (3) Shibnath Banerji vs. Emperor (1943), VI Fed, I.J.⁸ 151, at pp. 181 and 183.
- (4) Kali Pd. Upadhya v. King Emperor, I.L.R. 1944, Pat. 475.
- (5) Kamla Kant Azad v. King Emperor, I.J.R. 1944. Pat. 252.⁹

But, apart from the presumption, the second paragraph of Mr Bourne's affidavit¹⁰ states that 'the order of detention . . . was issued after the case of the petitioner had been carefully considered by the Central Government'. The case of Har Kissen Khanna v. The Crown (Ex-Parte Durga Das Khanna), I.L.R. 1944 Lahore (F.B.) is distinguishable on the facts; also there was no affidavit filed in that case on behalf of the Crown.

11. The applicant's third ground is this: That since he was arrested at about 10 a.m. on 9th March, 1942, at Lahore, the order in question could not have been passed on the same day in Delhi 'on any adequate information'. The answer to this is that the Central Government had already communicated to the Punjab Government its decision to detain the applicant under Rule 26 and had already asked the Punjab Government to arrest the applicant under Rule 129 of the D.I.R. This is stated in para 3 of Mr Bourne's affidavit.

12. Lastly, the applicant contends that the Central Government's order, dated 9th March, 1942, 'was vacated by the Punjab Government's order, dated the 24th March, 1943'. The mere production of the latter order before the Court will be sufficient to negative this contention of the applicant: the order nowhere purports to vacate the Central Government's order. Legally it cannot 'vacate' the order from which it derives its own force and authority.

13. What the Punjab Government did on the 24th March, 1943, was merely to transfer the applicant from the District Jail, Campbellpore, to the Sub-jail at Dharamsala. Instead of passing a single order of transfer, it passed two orders, namely:

(1) An order, addressed to the Superintendent of the District Jail, Campbellpore, terminating the detention of the applicant in that jail.

(2) An order, intended as an order of commitment of the prisoner, addressed to the Superintendent of the Sub-Jail, Dharamsala, for the prisoner's detention there.

The form used for the latter order is one suitable for an order of detention under Rule 26 (1) (b); it was incorrectly used for the order, which, obviously, was under sub-rule (5) of Rule 26. All this, however, in no wise, affects the validity or continuance of the orders of the Central Government dated 9th March, 1942.

14. Learned Counsel will submit that the applicant's detention is lawful, being under the Central Government's order under Rule 26 (1) (b) of the D.I.R., dated the 9th March, 1942, which was duly served, and which should be deemed to have been passed under Ordinance III of 1944, and which was, within 30 days before it would have expired (15th July, 1944) duly extended by the Central Government's Order dated the 1st July, 1944, which also has been duly served. To this latter order also will apply the provisions of section 40 (1) of the Ninth Schedule to the Government of India Act, 1935, and Home Department Resolution No. 18/3/39-Public, dated 28th July, 1939.

Appendix III

Supplementary Observations

With reference to the last but one sentence in para 9 of the Observations already submitted, the affidavit which was contemplated therein and which was settled by learned Counsel, was sent to the Home Department. The Home Department is not sure that the wording of para 2 or para 4 of the affidavit¹¹ is correct and has been advised that it would be much better not to file an affidavit but to rely on the argument in para 9 of the Observations.

2. Learned Counsel is instructed accordingly. If the Court requires an affidavit, it will presumably indicate the point on which the affidavit is required. In that event Counsel will please ask for an adjournment to produce the required affidavit.

3. Of course, if the detainee himself does not initiate it, there will be no occasion for discussion of the point concerning an Additional Secretary's constitutional position.

Enclosure

No. 16/1/42-Political (I).

Government of India.

Home Department.

New Delhi, the 9th March 1942.

Order

Whereas the Central Government is satisfied with respect to the person known as Sardul Singh Caveeshar that, with a view to preventing him from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order, or the efficient prosecution of the war, it is necessary to make the following order:

Now, therefore, in exercise of the powers conferred by clause (b) of sub-rule (1) of rule 26 of the Defence of India Rules and by Sub-section (4) of section 2 of the Defence of India Act, 1939, the Central Government is pleased to direct—

(1) That the said Sardul Singh Caveeshar be arrested by the Police wherever found, and detained until further orders of the Central Government, and

(2) That the power of determining from time to time under sub-rule (5) of rule 26 of said Rules, the place in which and the condition under which the said Sardul Singh Caveeshar may be detained, shall be exercisable also by the provincial Government of the Punjab.

Additional Secretary to the Government of India

- 1 Not printed.
- 2, 3 and 4 See enclosure to Doc. 265
- 5 Not printed.
- 6 See Doc. 235
- 7 Not printed.
- 8 See Docs 33 and 83.
- 9 See Doc 142.
- 10 and 11 Not printed

252: Caveeshar's case (contd.)

File No. 44/52/44 - Home Poll (I)

[NAI]

Race Course Road
New Delhi.
9th October 1944

Dear Mitra,

Roy mentioned to me the Lahore *habeas corpus* cases in connection with some enquiries from the Home Department and I wrote a note on the file stating what transpired in Court. I may take this occasion to inform you that the Judge in the course of the proceedings made some remarks which ought to be known to the Government. I was arguing on the strength of some H.L. cases that the recitals in our order were deemed to be correct till falsified. The Judge said that such a presumption would not necessarily arise in India where orders were made in the name of the Governor or Governor-General without their knowing anything about them as appeared in the Punjab F.B. case¹ and Shib Nath Banerjee's² case. I made it clear that such a presumption did arise though as a presumption of fact it was rebuttable. The Judge agreed, but we added that any slight evidence would rebut the presumption and then it would be incumbent on the Government to place evidence before the Court to prove affirmatively that the order was really that of the statutory authority concerned.

It was lucky that the proceedings were held in Camera or else the hostile press would have made a tremendous fuss over the Judge's remarks.

Yours sincerely,

B.L. Mitter

1 FB Forward Block - Case not printed.
2 Docs 33 and 83

253: Saligram Singh and others Appellants — Petitioners v. Emperor [Varma and Meredith J.J. (19 Oct. 1944)]

AIR, Vol. 32, 1945, Patna, p. 69

Raj Kishore Prasad — for Petitioners.

Advocate-General — for the Crown.

19.10.44

Meredith J. — These appeals against convictions under the Defence of India Rules have been admitted for hearing. Bail has been asked for, but that is opposed by the Crown relying upon the provisions of Rule 130A, Defence of India Rules.

Having regard to the provisions of R.130A, this Court upon the facts of these cases cannot possibly grant bail. But it is contended by Mr Raj Kishore Prasad on behalf of the appellants that this 130A is ultra vires and inoperative.

He argues, first it is not covered by S.2, Defence of India Act, and consequently the rule-making power provided by the Act gives no power to make such a rule. It is enough to say that this point has been expressly considered by a Bench of the Madras High Court in re Bhuvaraha Iyengar (I.L.R. 1942 Mad. 414), and I find myself in clear agreement with the reasonings and conclusions of Sir Lionel Leach C.J. upon the point. There is a ruling of the Bombay High Court in re Surajlal Harilal (A.I.R. 1943 Bom.82) to a similar effect. . . . Lastly, Mr Raj Kishore Prasad asserted that R. 130A was quite unreasonable and repugnant to elementary principles of justice and, therefore he says, we should refuse to consider ourselves bound by it. I am afraid that whatever we may think upon this point our powers do not extend so far. It is the business of the High court to observe laws however unreasonable if validly made. I must not be assumed to have expressed the opinion that the provision is in fact unreasonable and unjust, because it must be remembered that many provisions which would appear very harsh and unreasonable in peace time may be justified by the necessities of war.

In my judgment bail must be refused in these cases.

Varma J. — I agree and I have nothing to add.

Bail refused.

R.K.



254 Emperor v. Benori Lal Sarma and others respondents [Lord Chancellor (Viscount Simon) Lords Roache, Porter and Goddard and Sir Madhavan Nair (6 Nov. 1944)]

AIR, Vol. 32, 1945, Privy Council, p. 48

(From Federal Court of India: (143) 30 A.I.R. 1943 F.C.36)

6th November, 1944.

N.L.C. Macaskie, Sir W. Monckton, Sir Thomas Strangman, W. Wattach and R.K. Handoo
— for Appellant.

Respondents Ex — Parte.

The Lord Chancellor — This is an appeal by the Government of India from a judgment of the Federal Court (Varadachariar C.J. and Zafrulla Khan J., Rowland J., dissenting) dated 4th January 1943, dismissing an appeal from a judgment of the High Court at Calcutta (Sir Harold Derbyshire C.J., Khundkar and Sen J.J.), Setting aside a conviction of 15 individuals by a Special Magistrate purporting to act under Ordinance No. 2 of 1942 promulgated by the Governor-General on 2nd January 1942. The ground upon which the conviction was set aside was that the Ordinance was ultra vires. The question is largely academic, for upon Ordinance 2 being declared by the Federal Court to be ultra vires, Ordinance 19 of 1943 was promulgated to replace it. But in view of the elaborate argument that has taken place and the way in which the topic has been dealt with in the judgments in India, their Lordships think that the better course is to decide the question whether Ordinance 2 is invalid, especially as this may be of as instance deciding other questions which may arise hereafter as to the validity of Ordinances made, in cases of emergency, by the Governor-General under the authority of S. 317 and para 72 of Sch 9 Government of India Act, 1935.

Their Lordships must, however, make a preliminary observation on the way in which the issue of the validity of the Ordinance has been dealt with by the Indian Courts. The appeal from the Special Magistrate who convicted the accused was brought to the High Court under its criminal revisionary jurisdiction by a petition for revision under Ss. 435 and 439, Criminal P.C. This assumes that the Court below was a valid inferior Court whose decision calls, in the view of the appellants who were convicted and sentenced by it, for revision. But if the Special Magistrate who tried the case was a valid Court, duly authorized by the Ordinance, then by the very terms of the Ordinance there is no appeal to the High Court. Sen J., at the beginning of his judgment in the High Court, points this out very clearly. If, on the other hand, the Ordinance had no validity, the Special Magistrate was in the same position as a private person who took upon himself to conduct a trial of the appellants and to sentence them to imprisonment without any authority at all. In this latter alternative, the remedy of release by process in the nature of habeas corpus (S.491, Criminal P.C.) would be the appropriate remedy. Their Lordships content themselves with pointing this out, without seeking to dispose of the litigation on this ground, as in their opinion the

matter can be satisfactorily dealt with by considering whether the objections taken to the Ordinance have any validity.

The Governor-General purported to make and promulgate the Ordinance under a power conferred in him by para 72 of Sch.9, Government of India Act, 1935. That paragraph – which must, of course, be read in the light of the India and Burma (Emergency Provisions) Act, 1940 (where under the operation of the words ‘for the space of not more than six months from its promulgation’ was suspended during the period therein specified) – provides as follows:

72. The Governor-General may, in cases of emergency, make and promulgate ordinances for the peace and good Government of British India or any part thereof, any Ordinance so made shall, for the space of not more than six months from its promulgation, have the like force of law as an Act passed by the Indian Legislature but the power of making Ordinance under this section is subject to the like restrictions as the power of the Indian Legislature to make laws; and any Ordinance made under this section is subject to the like disallowance as an Act passed by the Indian Legislature, and may be controlled or superseded by any such Act.

It is to be observed that the paragraph does not require the Governor-General to state that there is an emergency, or what the emergency is, either in the text of the Ordinance or at all, and assuming that he acts bona fide and in accordance with his statutory powers, if cannot rest with the Courts to challenge his view that the emergency exists. In the present instance, such questions are immaterial, for at the date of the Ordinance (2nd January 1942) no one could suggest that the situation in India did not constitute an emergency of the most anxious kind. Japan had declared war on the previous 7th December: Rangoon had been bombed by the enemy on 23rd December and again on December: earlier Ordinances had recited that an emergency had arisen which required special provision being made to maintain essential services, to increase certain penalties, to deal with looting of property left unprotected by evacuation of premises, and so forth. Their Lordships entirely agree with Rowland J.’s view that such circumstances might, if necessary, properly be considered in determining whether an emergency had arisen: but, as that learned Judge goes on to point out, and, as had already been emphasised in the High Court, the question whether an emergency existed at the time when an Ordinance is made and promulgated is a matter of which the Governor-General is the sole judge. This proposition was laid down by the Board in 58 I.A. 169 and is plainly right. On 3rd September 1939, the date on which war was proclaimed between His Majesty and Germany the Governor-General, acting under S. 102, Government of India Act, 1935, had proclaimed that ‘a grave emergency exists whereby the security of India is threatened by war’ and thereupon the Indian Legislature acquired power to make laws for a province with respect to any of the matters enumerated in the ‘Provincial Legislative List’, with the result that the Governor-General, acting under para. 2 of Sch.9, had in case of emergency the same width of Legislative power.

Two objections, however, were raised to the validity of the Ordinance in connection with the question of ‘emergency’. The Ordinance recited that ‘an emergency has arisen which makes it necessary to provide for the setting up of Special Criminal Courts’. And the body of the Ordinance contained the necessary framework for Courts of Criminal jurisdiction consisting of Special Judges, Special Magistrates and Summary Courts, the provisions as to their respective limits of jurisdiction and procedure, together with restrictions on appeal (which fall to be separately considered in this judgment), but the Ordinance did not itself set up any of these Courts, but provided by S.1, sub-section (3) that the Ordinance

Shall come into force in any province only if the Provincial Government being satisfied of the existence of an emergency arising from any disorder within the Province or from a hostile attack on India or on a country neighbouring on India or from the imminence of such an attack, by notification in the official Gazette, declares it to be in force in the Province, and shall cease to be in force when such notification is rescinded.

In view of this last provision, it was contended that the Ordinance was invalid either because the language of the section showed that the Governor-General, notwithstanding the preamble, did not consider that an emergency existed but was making provision in case one should arise in future, or else because the section amounted to what was called delegated legislation', by which the Governor-General without legal authority sought to pass the decision as to whether an emergency existed to the Provincial Government instead of deciding for himself. There is, in their Lordships opinion no valid ground for either of these contentions. As regards the first one, it is enough to say that an emergency may well exist which 'makes it necessary to provide for the setting up of Special Criminal Courts' without requiring such Courts to be actually set up forthwith all over India. Any other view would appear to deny to the Governor-General the possibility, when faced with an emergency, of making provisions which could be instantly applied if the danger increased and became even more critical to the part of India where it was necessary to apply them. It would in fact (as Beaumont C.J. observed in reference to a similar objection in the Bombay High Court in I.L.R. (1943) Bom. 331 at p. 351), deny to the Governor-General, when faced with an emergency, the exercise of any foresight in the protection of the State. He may well have considered that, in view of the existing emergency, it was necessary to have a scheme for Special Courts drawn up and all ready for application if the existing emergency was further aggravated. A very similar situation arose in this country when, under the Emergency Powers Act, the Government devised and prepared for instant application a system of Zone Courts which were to be put into force only if, owing to invasion by the enemy or the like, the ordinary Courts in some part of the country were judged unable to function satisfactorily. Sen J. in the High Court expressed the opinion that 'the provisions of this Ordinance proclaim unmistakably that the Governor-General did not think that an emergency which necessitates that such an emergency may arise at some future time. That, however, is not enough. The Governor-General had no power to promulgate this Ordinance unless he was of opinion that the emergency requiring it actually existed; it is therefore *ultra vires* of the Governor-General'.

With all respect of the learned Judge, their Lordships are quite unable to accept this reasoning; it is perfectly possible, and indeed it is quite obvious, that the Governor-General regarded the situation on 2nd January 1942, as constituting an emergency – in view of what was happening it would be remarkable if he did not – and this justified and authorized the Ordinance providing in advance for Special Courts. It does not in the least follow that the bringing of Special Courts into actual existence and operation all over India must take place at the same time.

The next objection to be considered is the contention that S.26 of the Ordinance, which is framed to exclude the revisional and appellate powers of the High Court in cases dealt with by the Special Courts constituted under the Ordinance, was ineffective and *ultra vires* as being in conflict with S.223, Government of India Act, 1935. Section 223 provides

Subject to the provisions of this part of this Act, to the provisions of any Order in Council made under this or any other Act, and to the provisions of any Act of the appropriate Legislature enacted by virtue

of powers conferred upon that Legislature by this Act, the jurisdiction of, and the law administered in, any existing High Court . . . shall be same as immediately before the commencement of part 3 of this Act.

Previous to 1935 the High Court had revisional jurisdiction over the Magistrates' Courts in the relevant area. The argument advanced was that this jurisdiction could not be taken away by an Ordinance made by the Governor-General under para 72, as the Governor-General's Ordinance was not an 'Act of the appropriate Legislature'. 'Legislature', it was said, only means the Central Legislature consisting of the two Houses and the Governor-General, or the Provincial Legislature consisting of the two Houses and the Governor, and the Governor-General when making an Ordinance in cases of emergency under para 72 was not either of these Legislatures. The argument, as Sir Harold Derbyshire pointed out in his judgment, overlooked the provision in S.311 (6) of the Act, which says:

Any reference in this Act to . . . Acts or laws of the Federal or a Provincial Legislature, shall be construed as including a reference to an Ordinance made by the Governor-General.

There is, thus, no substance in this objection. Assuming that the condition as to emergency is fulfilled, the Governor-General acting under para 72 may repeal or alter the ordinary law as to the revisionary jurisdiction of the High Court, just as the Indian Legislature itself might do. There remains to be considered another objection to the validity of the Ordinance which is, as their Lordships understand, the main ground upon which it has been held to be ultra vires. The objection may perhaps be stated in more ways than one, but the substance of it, as appears both from the judgment of Sir Harold Derbyshire in the High Court and of the Chief Justice in the Federal Court, is that the Ordinance makes it possible to discriminate between one accused and another, or between one class of offence and another, so that cases may be tried either in the Special Courts or under the ordinary and well established Criminal procedure according to the direction and decision of Provincial authorities. It is evident that this is an aspect of the matter which has greatly troubled the majority of the Judges in India who have had this case before them, and in view of the well established practice in India by which decisions in Criminal cases are open to review by a higher Court, it is natural that those who are versed in applying this system should feel disturbed by the totally different arrangement contained in the Ordinance. The following are the sections of the Ordinance which appear to have given the judges in India most concern;

5. A Special Judge shall try such offence or classes of offences, or such cases or classes of cases as the Provincial Government, or a servant of the Crown empowered by the Provincial Government in this behalf, may by general or special order in writing direct . . .

10. A Special Magistrate shall try such offence or classes of offences, or such cases or classes of cases other than offence or cases involving offence punishable under the Indian Penal Code with death as the Provincial Government, or a servant of the Crown empowered by the Provincial Government in this behalf, may, by general or Special order in writing direct . . .

14. If any question arises whether, under an order made under S.5 or S.10, an offence is triable by a Special Judge or a Special Magistrate, the question shall be referred for decision to the authority which made the order and the decision of that authority shall be final.

16. — (1) A Summary Court shall have power to try such offences or classes of offences, or such cases or classes of cases as the District Magistrate, or in a Presidency-town the Chief Presidency Magistrate, or a servant of the Crown authorized in this behalf by the District Magistrate or Chief Presidency Magistrate, may by general or special order direct.

Provided that no person shall be tried by a Summary Court for an offence which is punishable with imprisonment for a term exceeding two years, unless it is an offence specified in sub-section (1) of S. 260 of the Code.

(2) The District Magistrate or Chief Presidency Magistrate may by general or Special order give directions as to the distribution among the Summary Courts within his jurisdiction of cases triable by then under sub-section (1).

Sir Harold Derbyshire found that the sections above quoted were invalid. He pointed out, with justice, that the Ordinance left it to the local Government, or to some officer of the local Government empowered by it in that behalf, to direct what offences or classes of offences, and moreover what cases or classes of cases, should be tried by the Special Courts. He thought that this amounted to repealing the Code of Criminal Procedure in part, for under the Ordinance there would be no trial by jury and no right of appeal and no right of revision by superior Courts, including the High Courts, such as are enacted by the Code.

'In effect', he said,

It is the Provincial Government or the District Magistrate acting not in a judicial capacity but in an administrative capacity that deprives the subject of his right under the Code and repeals its valid provisions as far as he is concerned. That, in my view, is repealing the Code of Criminal procedure in part -- in that instance legislation ad hoc for the man's case.

He added that he did not find authority in S.72 to justify this result and in his view the above-quoted sections which he declared invalid, purported to authorize persons other than the duly authorized Legislature constituted under the Government of India Act, 1935, to repeal ad hoc certain provisions of the Criminal Procedure Code and of the letters patent of the High Court. Khundkar J. agreed with the Chief Justice on this point and stated his objection to the above quoted sections of the Ordinance thus.

The result is that no man accused of an offence may know whether he is to be tried by a Court under the Code, subject to all the safeguards provided by the Code, including a right of appeal or revision under the Code, or to be tried on the mere motion of the provincial Government or of an officer of the Crown empowered by the Provincial Government, by some one or other of the Special Courts under the Ordinance. The provincial Government or an officer of the Crown empowered by the Provincial Government is endowed with a power that is far reaching, unfettered by rule, unconditional and subject to no supervision by the High Court or by any Court under the Code. It is a power to direct any person accused of any criminal offence to be tried by one or other of the Courts constituted under the Ordinance.

The learned Judge goes on to point out what he regards as 'the possible mischief which may flow from the unwise or injudicious exercise of such a power, fortifying his criticism by quotations from well-known writers on jurisprudence such as Anson and Salmond; and he concludes that the above-quoted sections are ultra vires on the ground that the Ordinance gives to the Provincial Governments a 'power to effectuate jurisdiction of Special Criminal Courts by making orders in individual cases or groups of cases'. Sen J., as their Lordships understand, did not differ from the Chief Justice and Khundkar J., in this view, though he rested his decision that the Ordinance was ultra vires on other grounds which their Lordships have already indicated. In the Federal Court the Chief Justice dwelt on the value of the revisionary jurisdiction, but considered that the most serious defect in the impugned Ordinance was the power it conferred to discriminate between one accused and another by directing

trial in different Courts. He developed his objections on this point by elaborate reference to the constitutional principles involved in certain decisions of the Supreme Court of the United States and of the High Court of Australia, and quoted passages from the writings of Sir Courtenay Ilbert and of Sir Cecil Carr to illustrate the relation between executive and legislative powers in the British Constitution. He concluded that Ss. 5, 10 and 16 of the Ordinance are 'Open to objection as having left the exercise of the power thereby conferred on executive officers to their absolute and unrestricted discretion, without any legislative provision or direction laying down the policy or conditions with reference to which that power is to be exercised'.

This was the grounds upon which the Chief Justice and Zafrulla Khan J. based their decision that the appeal of the Crown should be dismissed.

With the greatest respect to these eminent Judges, their Lordships feel bound to point out that the question whether the Ordinance is ultra vires does not depend on considerations of jurisprudence or of policy. It depends simply on examining the language of the Government of India Act and of comparing the legislative authority conferred on the Governor General with the provisions of the Ordinance by which he is purporting to exercise that authority. It may be that as a matter of wise and well framed legislation it is better if circumstances permit to frame a statute in such a way that the offender may know in advance before what Court he will be brought if he is charged with a given crime, but that is a question of policy, not of law. There is nothing of which their Lordships are aware in the Indian Constitution to render invalid a statute, whether passed by the Central Legislature or under the Governor-General's emergency powers, which does not accord with this principle. Rowland J., at the beginning of his dissenting judgment, collects a number of striking quotation from previous judgments delivered in the Privy Council as to the proper rule of construction. Again and again, this Board has insisted that in construing enacted words we are not concerned with the policy involved or with the results, injurious or otherwise, which may follow from giving effect to the language used. The learned judges who were in the majority in the Federal Court would presumably not contest this proposition, and their Lordships rather understand their view to be based on the conception that there is something underlying the written Constitutions of India which debars the Executive Authority, though specially authorized by the statute or Ordinance to do so, from giving directions after the accused has been arrested and charged with crime as to the choice of Court which is to try him. Their Lordships are unable to find that any such constitutional limitation is imposed. Indeed, Rowland J. points out that if it were held that where two sets of Courts exist side by side power cannot be delegated to pass an order directing that a case shall come before the Special Court and not before the Court under the Code, this would throw doubt on a long course of legislation in India where this very thing is enacted. The learned judge cit. 13 instances, and, in addition to these, refers to the discretion conferred by the Army Act and by the Air Force Act upon the prescribed authority to decide in a particular case, where a Criminal Court and a Court martial would both have jurisdiction, before which Court the accused shall be brought for trial. There is not, of course, the slightest doubt that the Parliament of Westminster could validly enact that the choice of Courts should rest with an Executive Authority, and their Lordships are unable to discover any valid reason why the same discretion should not be conferred in India by the law-making authority, whether that authority is the Legislature or the Governor-General, as an exercise of the direction conferred on the authority to make laws for the peace, order, and good Government of India. Their Lordships will humbly advise His Majesty that the appeal

should be allowed. The judgment of the Federal Court must be set aside and the ordinance 2 of 1942 declared not to be ultra vires.

Appeal allowed.

G.N.

255: Balkrishna Narayan Saoji (Applicant) v. Col. N.S. Jatar, Inspector General of Prisons, C.P. Berar, Nagpur and another — Opposite Party Bose and Sen J.J. (6 Nov. 1944)

AIR, Vol. 32, 1945, Nagpur, p. 33

Misc. Criminal Case No. 47 of 1944. Decided on 6th November 1944.

G.R. Pradhan, S.G. Ghuls, Y.G. Shirke and R.E. Manochar — for Applicant

M Hidayatullah, Advocate-General — for the Crown.

(Order 13th September 1944) — These are proceedings for contempt of Court against the Inspector-General of Prisons of the C.P. Government and the Superintendent of the Central Jail at Nagpur. The applicant Balkrishna Narayan Saoji was at the time we are considering here a security prisoner detained under R.26 (1) (b). Defence of India Rules. It seems that he had been giving considerable trouble in the jail and we make it plain that in the action we propose to take we are not in any way sympathizing with his conduct or endorsing his action. We have no doubt he richly deserved all he got. On 19th May 1943, the then Superintendent of the Central jail, not the one now before us, filed an application against the prisoner under S.52. Prisons Act, for having refused to take food on 17th May 1943. The case was eventually registered on 3rd June 1943, under R. 19 (2) read with R. 17 (9), C.P. and Berar Detention Order. The case was taken up by Mr M.A. Razzaque, a Magistrate of the First Class. On 21st September 1943, the applicant applied to the Magistrate for an adjournment. The prayer was refused and the case was closed for judgment on 25th September 1943. On 23rd September 1943, the applicant put in a petition to the High Court, written on the 22nd asking for a stay of proceeding and handed this to the Superintendent now before us for being forwarded to the High Court. He also asked in the petition that interviews with other counsel might be permitted because the counsel employed by him had told the Magistrate on 21st September 1943, that he was unable to argue the case. We make no comment on this latter request because in view of the applicant's conduct in jail it is possible that this was not made in good faith. We will confine our attention to the application for stay.

Instead of forwarding this application to the High Court, the Jail Superintendent forwarded it to the Magistrate trying the case with a request to him to forward it not to the High Court, but to the Inspector General of Prisons for such remarks as the Magistrate might like to make on it. Moreover knowing that the case had been fixed for judgment on 25th September 1943.

the application was not forwarded immediately but was sent on 24th September 1943. This has been regarded as prompt action by the Inspector General of Prisons in his report to the Secretary to Government. The report is dated 21st July 1944, and the remark is to be found in para 2. All we will say about this is that opinions differ as to what constitutes promptness, considering the urgency of the matter. The Magistrate did not return the application immediately as he should have done, but kept it for four days and waited till 28th September 1943, before directing it to be returned. We are told by the learned Advocate-General that the jail endorsements on this application show that it was not received by the Superintendent of the Central Jail till 8 p.m. on 30th September 1943. This delay of two days from the passing of the Magistrate's order to the receipt of it in the Central Jail requires explanation, and before we proceed further with the Jail Superintendent's case we call for an explanation from the Magistrate, first for keeping this important application asking for stay of these proceedings with him for four days. (The endorsement of his office shows that he received it on 24th September 1943, at 4 p.m. His order directing its return to the Superintendent of the Central Jail was not made till 28th September 1943). Secondly, as to whether the application was in fact returned on the 30th at as late an hour as 8 p.m. or whether it was returned earlier, and if it was returned after he had delivered judgment why this should have occurred.

The Magistrate did not deliver judgment on 25th September 1943, as he had originally proposed but postponed delivery till 30th September 1943. We do not know why delivery of judgment was postponed. Of course there was nothing wrong in postponing it and it may be that it was done in order to allow time for the application to reach the High Court. But if that is so, the delay which, according to the learned Advocate-General's instructions occurred in the Magistrate's Court requires explanations. As we have said, we withhold further comment on the Jail Superintendent's case until that explanation is received. On returning the application to the Jail Superintendent the Magistrate made the following endorsement:

The judgment is fixed for 30th September 1943 and as such, I cannot pass any remarks. This may be returned back to Superintendent, Central Jail, for necessary action as I have nothing to do with the revision petition.

The date on which the Superintendent received this back has as we have just remarked, yet to be ascertained. But on receiving it back from the Magistrate the Superintendent instead of forwarding it to the High Court forwarded it to the Inspector General of Prisons on 1st October 1943. In his endorsement forwarding it to the Inspector-General of Prisons the Superintendent stated that:

Mr Razzaque has returned it to the jail after delivering the judgment in case of the prisoner on 30th September 1943.

When the Inspector General received this application he did not forward it to this Court as he should have done but returned it to the Jail Superintendent and had it not been for another application made at a later date this matter would probably never have come to the notice of the Court. In our opinion, this constitutes contempt. The Inspector-General's explanation is that as the application of the 22nd/23rd asked for stay and as he received the application after judgment had been delivered he was of opinion that nothing more could be done and so he returned it to the Jail Superintendent and that in doing so he had no intention of impeding the course of justice. We accept this explanation to the extent that he acted in good faith, but we consider it necessary to censure him for his action. It was not for him to

arrogate to himself the functions of His Majesty's Judges and decide what this Court could and could not do. We regret to notice a lamentable tendency of late of attempts by executive officials to set themselves above the High Court. Examples are to hand not only in these cases but in matters which have reached the Federal Court dealing with cases from Bengal and the Punjab. They are also to be found in two decisions of the Lahore High Court. A similar attempt was made in England.

It is true the exigencies of war have armed the executive with immense powers and that Courts of justice, including the High Courts, have to some extent been neutralized and rendered ineffective, but it is not for the executive to judge how far their powers extend. That is the sole and exclusive privilege of His Majesty's Judges and of His Majesty's Privy Council. No official, however highly he may be placed, has the right to determine the extent of his own authority and power and any attempt by whomsoever made and however highly he may be placed, to withhold matter or delay applications addressed to this Court, however frivolous or worthless they may appear to be constitutes a gross contempt of Court, and if this happens again in this province, severe action will be taken against any person who attempts to abuse his position of authority by withholding or delaying matter intended for this Court, and we repeat that this will be done whoever the official may be and however highly he may be placed. We also state that ignorance of the law will provide no excuse, particularly after this case. The Crown is not slow to ask for the application of this maxim with all its rigour in cases where the executive are proceeding against persons more humbly placed in life. A man who sells a pack of cards or a bag of wheat above the control rates in circumstances when he could not reasonably have known of the order fixing the price is prosecuted, and the Courts are asked to treat him with severity. They are asked to apply the maxim that ignorance of the law affords no excuse and are told that it is the business of these humbly placed persons to know the law and find out what it is. We say nothing about that but remark that the maxim applied equally in the case of Government officials who are more happily placed and who have the advantage of free legal advice from the legal advisers to the Crown at their disposal if they trouble to ask for it. There is, therefore, no excuse on this point.

Turning now to the case of the Inspector-General of Prisons we hold that ignorance of the law affords him no excuse and so the Inspector-General is guilty of contempt of Court. But in considering the action we should take against him we take into consideration the fact that he did not know the law and did not realise that it constitutes contempt of Court to act as he did and we believe that he acted in good faith. Also there was present in his case ground for a layman to believe that the matter had become infructuous because judgment had already been delivered. We do not imply that he was right in this. As we have said he was wrong. But we are satisfied that he held view in good faith and acted accordingly.

We say that he was wrong in the view he held because even though the proceedings of the Magistrate could not have been stayed after he had delivered judgment there was still much that the High Court could do. It could direct an inquiry into circumstances of the case. It could also institute proceedings for contempt as has now been done. We also take into consideration his long record of distinguished and gallant service-gallant on the field of battle where he has been subjected to sacrifices which most of us have happily been spared — distinguished in the domain of civil administration and distinguished no less for administrative ability than for a record of just and humane administration of the jails of this Province of which he has been in charge for many years. We therefore consider it sufficient in his case

to administer a censure. We do even this with reluctance and regret because of his distinguished and gallant record of service and because we do not question the good faith of his action. But it is necessary for us to vindicate the authority of the Courts and uphold the majesty and grandeur of the law which knows no fear and shows no favour, which makes no distinction between man and man, and which acts without spite vengeance or malice.

A copy of this order will be sent to Mr Razzaque, the Magistrate who tried the proceedings out of which this application arises, for an explanation on the points we have referred to earlier in the order. The case of the jail Superintendent will be considered after the Magistrate's explanation has been received.

(Order 6th October 1944) — As far as we can gather from our file the original of Saoji's application has never been handed over to this Court until it was produced by the Advocate-General today. As the complaint all through has been regarding suppression of this document, if what we state is actually the case, the matter requires explanation. As we had paper books before us we did not see the original and took it for granted that the copies in our paper book were copies of the original. But we find that they are copies of copies supplied by the Crown. And these copies are not even certified as true copies. The matter requires explanation. We want to know (1) where and in whose possession the original has been since the date of issue of notice (2) why it was not filed and who was responsible for withholding it from this Court, (3) why such copies as have been supplied were not certified as true copies and who was responsible?

It also appears that the original of No. 1317 S.P. dated 29th September 1943 and of the Central Jail Superintendent's endorsement No. 1349 dated 1st October 1943 was not filed here and in this case also only uncertified copies were furnished. This is exceptionally important because now that the original has been shown to us we find it bears an important endorsement by the Inspector General of Prisons, which is not in the copies supplied. We want to know: (1) where and with whom this document with its endorsements has been since the issue of notice to the Crown. (2) Who was responsible for withholding the original from this Court (3) why the copies supplied were not certified as true copies and who was responsible for suppressing the endorsement of the Inspector General of Prisons from the copies supplied and (5) why this important endorsement was suppressed?

Another matter in which explanation is required is in relation to the Inspector General of Prisons' statement in his report No. 158/C dated 21st July 1944. Para 2 that Saoji's application was forwarded to the Magistrate Mr Razzaque 'in accordance with the usual procedure'. We want to know (1) whether this procedure is to be found in rules, or circulars or other written directions, and if so where. We shall also require copies of these if they are in writing (2) and in any event we shall require some five or six instances in which this has been done particularly in connection with applications addressed to the High Court. The Advocate-General wants a fortnight's time. Put up a fortnight hence.

(Order 6th November 1944) — This case becomes more and more serious the further we go and its ramifications have extended farther than we had at first visualised. The applicant Saoji put in a petition to this Court on 12th May 1944 complaining that a petition which he had made from jail on 22nd September 1943 for revision of proceedings in a criminal case in a lower Court, where he was being prosecuted, was not forwarded to this Court and that it was withheld by the Inspector-General of Prisons of this Province and by the Superintendent of the Central Jail, Nagpur. He stated specifically that the application had never been sent and that it was detained by these two officers. The petition was accompanied by an affidavit

– On 3rd July 1944 a Bench of this Court called for a report from the Jail authorities on the application and directed the office of this Court to furnish them with a copy of it.

The report was received on 7th August 1944 and the matter was placed before us on 14th August 1944. After studying the application and the report we considered that *prima facie* case of contempt was disclosed and so directed notice to issue to the Crown and to the non-applicants. There is no fixed procedure in contempt proceedings and this can be regarded as the stage at which this Court took cognizance of the complaint. The previous proceedings were in the nature of a preliminary investigation. Anyway whatever doubts there may have been regarding the nature of the previous order there can be none in respect of the order of 14th August 1944 which we issued.

Arguments were heard on 12th September 1944 and the case of the Inspector General of Prisons was disposed of. In the case of the Jail Superintendent we considered it necessary to have further information. One of the points we were considering was the question of delay. Saoji's affidavit suggested that his application to this Court was dated 22nd September 1943 and that it had been handed over to the Jail Superintendent on the same day. The Inspector-General of Prisons in his report to the Secretary to the Provincial Government stated that the application was dated 22/23 and that it had been forwarded to the trying Magistrate promptly in accordance with the usual procedure. The Jail Superintendent in his report to the Under Secretary to Government dated 19th July 1944 stated categorically that the application was written on 22/23rd September 1943 and that it was handed over on the 23rd. We wanted further information about this 'prompt' action and indeed commented on the term in our order of 13th September 1944 which disposed of the Inspector-General's case. It will be seen that there is a difference of a day between the date in the affidavit and the statements of the Inspector-General in his report and of the Jail Superintendent in his. The date in the paper book copy was also 22/23.

The other point regarding the delay was the delay which, according to the Superintendent's explanation, occurred in the office of the Magistrate trying the case. The Jail Superintendent said that he received the application back from the Magistrate on 30th September 1943 and sent it on to the Inspector-General the next morning. We did not on that date see the original of the Magistrate's order returning the application. We were reading from the copies in our paper books which we naturally concluded were copies of the original. The Advocate-General however said that he had the original of the covering letter before him and told us that the original (that is to say, the covering letter) bore an endorsement which was not in our paper books. We thought that he was reading from the original from the Court files. The endorsement was to the effect that the original application of 22nd September 1943 was received back from the Magistrate at 8 p.m. on the 30th. That struck us as an odd hour for an application like this to be delivered in the Jail, so we asked the Magistrate for an explanation about this, as well as about the delay which was said to have occurred in his office. He gave an explanation about the delay with which we shall deal in a minute, but he also said that the application was handed back to the Jail Superintendent between 4.45 and 5 p.m. and not at 8 p.m. as we had been told by the Advocate-General. He explained that the application was handed back in person by his reader, and as he and his reader were, according to the gate register at the Jail, only there between 4.45 and 5 p.m. the application could not have been handed back at 8 p.m.

Seeing this discrepancy between the endorsement which the Advocate-General read out to us on 13th September 1944 from what he told us was the original, and the explanation of

the Magistrate, we said we would like to see the original for ourselves. This was at the hearing on 6th October 1944. But when we turned to the record we found to our surprise that the originals were not there (that is to say, neither the original of the application nor of the covering letter), and that what had been handed over to the Court was not the document which the applicant complained was being suppressed from us but a copy of a copy. And even that copy was not certified as a true copy. And so also with the Magistrate's order of 28th September 1943 and the covering letter. Also, so far as the Magistrate's order is concerned, the copy given to us did not have this important endorsement about the time of receipt in jail.

It is bad enough in an important case of this kind, where the good faith of high Government officials is being challenged, that there should be this inexcusable carelessness, but the explanation given makes matters worse. Whether or not Government officials know that secondary evidence is not ordinarily permissible in Courts and that the originals, when in existence, must be produced, the law officers of the Crown certainly ought to know this. It is bad enough in any ordinary case to be so careless, but here, where the good faith of the head of a Department is being challenged, and where the complaint is that a document addressed to this Court is being deliberately withheld not to hand it over to the Court at the earliest possible opportunity is inexcusable. And to hand over partial copies of other documents is equally inexcusable. This is particularly unfortunate here because it lays official honesty open to serious attack. The document was not even in Court on 6th October 1944, that is to say 4 1/2 months after complaint about its suppression was made. When we asked for it, its whereabouts was not even known and it was eventually unearthed in the Advocate-General's office. He then filed the document on that day along with some other papers and that was the first we saw of it. As a matter of fact even the Advocate-General had only been given it a few days before and as the original had been made out in triplicate he concluded that he had one of the original triplicates before him and that another of them must already have been filed along with the documents forwarded with the report of the jail.

We say this was particularly unfortunate in this case for this reason. As we have said, there is a discrepancy of a day between the date given in the applicant's affidavit and the report of the Inspector-General of Prisons which was forwarded to this Court. We take it that the object of forwarding this report without comment was to apprise us of the fact that was the defence to this action — at any rate the defence and explanation furnished to the Secretary to Government. But what this report does not disclose, and what becomes apparent the moment one looks at the original application, is that the date 23rd on the original application, is not in Saoji's handwriting and was quite evidently not there when it was handed over to the Assistant Jailor. That date is in different ink and has been inserted by somebody else — presumably some clerk in the jail office. The entire application is in Saoji's own handwriting and the date placed on the application by him is 22nd September 1943. Underneath the 22 a line appears in different ink and underneath that figure the figure 23. Looking at the copy given to us we were led to conclude that the date of the application was 22/23 is added by somebody else.

Now we do not say that this was done with malicious intent or for some improper reason. It may well be that the date on the application was incorrect or that having been written on the 22nd it was not handed over to the Jail authorities till the 23rd, and so the latter figure was added. But such tampering with a document addressed to this Court is improper and is in itself a contempt. The jail authorities can endorse the date of receipt by them separately if they so desire but they have no business to alter or add to or tamper with any portion of a

document intended for and addressed to this Court. It is most objectionable to add a figure to the date so as to make it appear that the document bears a different date to the one which it originally bore. These alterations are not even initialled, and it is only a close scrutiny of the document which reveals the tampering – for tampering it is, whether done with innocent intent or from an improper motive. It is even more objectionable not to disclose these facts to us when the original is not handed over to us as it ought to have been, and we are provided with copies which furnish no inkling of this. We will deal with the explanation given to us about this later.

Another fact which the original discloses and which is not to be found in the copy handed over to this Court is that the application is headed: 'Urgent. Two more copies made over as demanded'. This heading is in a prominent position and is written in three lines in thicker ink than the rest of the application and the lines are underlined. It could not possibly escape the attention of any one who glances at the application. It hits the eye at once. It also shows that the application was prepared in triplicate by the prisoner himself. An extremely important point which was not disclosed to us until after we had demanded production of the original. Turning next to the attack made on the Magistrate by the Jail Superintendent, for attack it is whether so stated or not. The Jail Superintendent sent Saoji's application of 22nd September 1943, to the Magistrate trying the case on 24th September 1943, with a covering memorandum of that date in these terms:

Subject: Revision application of Class II security prisoner B.N. Saoji – and Detention Order, 1943.

In forwarding herewith the revision application of Class II security prisoner B.N. Saoji addressed to the High Court, I would request you kindly to forward it to the Inspector-General of Prisons with your such remarks as you like to make on it. 'The application may be sent in duplicate to the Inspector-General of Prisons'.

This application was received by the Magistrate at 4 p.m. on the 24th. We were given an uncertified copy of this memorandum but were not furnished with the original. The copy did not have on it the endorsement about the time at which was received. We draw attention at this stage to the word 'revision' in the memorandum because it has an important bearing on a matter which we will discuss in due course. At the moment we merely draw attention to the word. The application and the covering memorandum were received in the Magistrate's office at 4 p.m. on 24th September 1943. The first question which arises is whether the application was forwarded promptly by the Jail Superintendent.

It will be recollected that the Magistrate closed the proceedings before him for judgment on 21st September 1943, and that he fixed the case for delivery of judgment on 25th September 1943. There was accordingly urgency in the matter. If the High Court was to have an opportunity for interfering, there were only four days left to it to hear the application and pass orders. The applicant's affidavit states that the petition was handed over on the 22nd, and the date on the petition as now observed from the original bears him out. There is no counter affidavit. All we have is the unproved endorsement of the Assistant Jailor to the effect that the application was signed before him on the 23rd. It is most unsatisfactory to have matters left in this inchoate form and we would be fully justified in concluding that the affidavit is true. However, in contempt proceedings the person proceeded against is as much entitled to the benefit of the doubt as any accused in a Criminal case. Accordingly we will give the Jail Superintendent the benefit of the doubt and accept that the document was handed over on the 23rd. But we are justified in assuming on these facts that it was handed over early in the day.

Now, as we have said, the document is prominently headed 'urgent'. That strikes the eye at once. The first sentence in it asks for 'immediate action'. It discloses, and of course this would be a matter known to the Jail Superintendent in any event that the case had been fixed by the Magistrate for judgment on 25th September 1943. It discloses that the applicant was seeking revision of this order and asking the High Court to stay delivery of judgment until the applicant had been properly tried. (The complaint was that the applicant was not permitted to consult three counsels whom he named: that a petition for revision against one of the interlocutory orders of the Magistrate was destroyed by the jail officials: that the applications made to the trying Magistrate were not forwarded: that at the fifth adjournment of the case when the prisoner was ultimately produced in Court he informed the Court of his inability to proceed because the counsel who had hitherto been appearing for him had withdrawn being busy with some other case: that the Court refused to give the prisoner further time, closed the case, and fixed 25th September 1943 for delivery of judgment). The urgency of the matter was therefore apparent on the application as soon as possible, the Jail Superintendent left it till the last possible minute and despatched the application almost at the close of a working court-day. Clearly it would have been impossible for the High Court to do anything at that stage. And this is regarded by the Inspector-General of Prisons as 'prompt action'. The jail is at Nagpur. The trying Magistrate was at Nagpur. The trial was at Nagpur. The High Court is at Nagpur. The Provincial Government is at Nagpur. The Inspector-General of Prisons is at Nagpur. The Legal Secretary is at Nagpur. The law officers of the Crown are at Nagpur. There are telephones at Nagpur, and whether or not the trying Magistrate has a telephone connection every one of these authorities could be reached on the telephone. Had there been the slightest doubt as to the proper course it could have been cleared up at very short notice. But the Jail Superintendent does not say he had any doubts. He says in his report of 19th July 1944 that 'it was forwarded by me to the Court of Mr Razzaque M.F.C. Nagpur on 24th September 1943 *for being forwarded to the High Court*' (the under lining (here italicized, is ours) 'through the I.G. of Prisons C.P. and Berar'.

And he explains why he did this. He says: 'The idea of sending the petition through Mr Razzaque was that the case of the prisoner may be adjourned till the orders of the High Court on the petition of the prisoner were received'.

We do not believe this explanation, and the Jail Superintendent has given another one in the belated explanation which he tendered to us direct on 13th October 1944. The explanation given there (we refer to the statement of 13th October 1944) is not that the Magistrate might have an opportunity of staying his proceedings, pending the orders of the High Court but 'because he was undefended undertrial and judgment was due to be delivered in the case of which he sought stay of proceedings'.

We say we do not believe the first explanation because the memorandum forwarding the application to the trying Magistrate asks that the application be forwarded, not to the High Court, but to the Inspector-General of Prisons. This is not the formula adopted in official correspondence when a communication is intended to reach an ultimate destination. Had there been the slightest intention that the application should ultimately reach the High Court the trying Magistrate would have been asked to forward it to the High Court, through the Inspector-General of Prisons, and not to the Inspector-General of Prisons. We have not the slightest doubt that so far as the Jail Superintendent was concerned the ultimate destination which he intended for the document was the Inspector-General of Prisons and not the High Court. We say this with all the more confidence because it is apparent from his own action

that he was aware of the usual official formula when a paper is being forwarded to an ultimate destination through another channel. When he sent Saoji's application of the 22nd to the trying Magistrate along with the covering memorandum which we have reproduced above he added an explanation for the Inspector-General and sent it along with the other papers. This document, also dated 24th September 1943 runs:

Forwarded to the Inspector General of Prisons C.P. and Berar, Nagpur, through Mr M.A. Razzaque, M.F.C. [Magistrate of the First Class], Nagpur for favour of disposal.

This is also headed

'Revision application of Security Prisoner B.N. Saoji addressed to High Court'.

Then again, it now transpires that the application was made in triplicate. According to the Legal Secretary's explanation:

Thus, in practice means that petitions are made in triplicate one copy being for the jail office, one for the Inspector-General of Prisons and the third for the authority to whom it is addressed.

Why was not the third sent to us if that is the case? If the real object was to enable the Magistrate to stay proceedings till the High Court could decide the point, why was not one of the originals sent to us and the other to the Inspector-General through the Magistrate? The answer is obvious. There was not the slightest intention on the Jail Superintendent's part to forward the application to the High Court. He was not prepared to take the responsibility. We have not the slightest doubt that it was not the intention of the Jail Superintendent to forward the application to High Court or to see that it reached the High Court. His intention was quite clearly to let his superior, the Inspector-General of Prisons, deal with the matter. He himself was either afraid, or did not want to take the responsibility of acting on his own initiative.

Now we would not have blamed him for this. He would have been wrong. He would have been guilty of contempt just the same. But nothing beyond a mild admonition would have been necessary had there been a frank and straightforward confession of guilt and after explanation or, alongside of it, an unqualified and unconditional apology. But there is not a trace of apology regarding this. There is no contrition. There is no expression of regret. On the other hand, false explanations are offered, the action is defended and the trying Magistrate is attacked. That we will come to later. But at this stage we will remark that there is no possible excuse or justification for this attitude. The importance of tendering an unconditional and unqualified apology in contempt cases was stressed by one of us in I.L.R. (1941) Nag. 301. The matter was dealt with at length and at p. 308 it was said:

I refer to the matter in these strong terms only in order that there should be no misconception about apologies in the future, and about the practice in respect of the tendering of them and in order that there should be no possible mistake about my meaning and attitude.

That was in the year 1941 so there has been ample time to take heed of the warning given. We also reproduce a passage from Oswald on Contempt, Committal and Attachment, Edn. 3, page 215:

The respondent to an application to commit should be careful not to aggravate his offence, and so perhaps bring more severe punishment on himself by unduly resisting the application: if he has in fact been guilty of contempt it is safe to apologize.

We also draw attention to the remarks of Kindersley V.C. in (1964) 33 L.J. Ch. 294 at page 298 and of Lord Russell of Killowen in (1900) 69 L.J.Q.B. 502 at page 506. We may mention

in addition that we drew the attention of the Advocate-General to the decision in the Nagpur case during the course of the arguments on 6th October 1944 and remarked that the only person who had tendered an unqualified apology up till then was a person who was not before us against whom we were not proceeding, and who was not at fault, namely the trying Magistrate Mr Razzaque. We did this of set purpose to afford the Jail Superintendent an opportunity to tender an unconditional apology. And what do we find after that? Not a word of apology regarding the omission to forward the application at once but a long written justification of this by the Legal Secretary which was not only not repudiated by the Advocate-General in argument but was actually defended. A new afterthought was added by the Jail Superintendent about an undefended under trial prisoner and no repudiation was made of the prior explanation which in our opinion, is untrue despite the fact that we had hinted at the previous hearings that we found this difficult to believe. And to crown all we are informed in the Legal Secretary's long written statement that we are labouring under a misapprehension.

Now to return to the trying Magistrate. His office received the application at 4 p.m. on 24th September 1943. It was not returned to the Jail Superintendent until the 30th. Judgment had by then been delivered. We called for an explanation regarding the delay. The explanation is full and frank. There is no attempt at concealment or evasion. It is evident from the facts given there and from his reader's statement that the Magistrate was not at fault. He has nevertheless manfully accepted responsibility for the delay in his office and has tendered an unqualified and unconditional apology. This is in refreshing contrast to the evasions, denials and half truths with which we have had to contend so much of late and reflects credit on Mr Razzaque.

As neither Mr Razzaque nor his reader are before us, it will suffice to set out the facts relating to this very shortly. The application was received in Mr Razzaque's office too late to be put up before him on the 24th when it arrived. On the 25th Court reader forgot to put it up and the explanation is a reasonable one. The reader was overworked at the time and as the Court had to shift from the usual Court, where Mr Razzaque had to try some case; to the jail where he had to try others, the reader overlooked this application in the resulting confusion. The 26th was a Sunday and, according to the reader, the application was placed before Mr Razzaque on the 27th, Mr Razzaque does not try to blame his reader and say that this is not true. All he says is that he does not remember this and that he was under the impression that he passed orders on it as soon as it was placed before him which would make it the 28th. We think that was possibly the case because there was nothing for Mr Razzaque to do but to return the application and he would hardly have laid it aside for consideration. The endorsement which he made on the forwarding memorandum looks as if it was written then and there as soon as the papers were put up to him. However, we are not here to decide between Mr Razzaque and his reader. But we do observe that we appreciate not only Mr Razzaque's straightforward and wholly frank attitude, but his courage and manfulness in not trying to blame a subordinate and in accepting full responsibility for all that occurred in his office whether he was personally to blame or not. Orders were passed on the 28th and so far as Mr Razzaque personally was concerned, the matter ended there.

It will be recollected that though the case had been fixed for delivery of judgment on the 25th this was later changed to the 30th for reasons which have no bearing on the present case. The reader says that there was a rush of work on the 29th and that as he was to go to the jail with Mr Razzaque on the 30th he thought it would save time to take the papers personally

and hand them back in person. We doubt if this is true. It is much more likely that the reader being overworked thought he would save himself trouble if he left the matter over till the 30th and then take the papers in person. This would save entries in the dark book and so forth. However, the reader is not before us, and we are not concerned here with his action. The papers were returned to the Jail Superintendent on the 30th at 5 p.m. As we have said, the Advocate-General informed us at the hearing on 6th October 1944, reading from the covering letter, that the figure was 8. We had not then seen the document. When the trying Magistrate pointed out that was impossible, then we were told by the Advocate-General and the Legal Secretary that the figure was 5 and not 8. Now that we have seen the document, we think the figure is a 5 and not an 8 though it could be read as either. Moreover it is formed in such a way that accusations of tampering could with justification be made. After a close scrutiny, through powerful glasses, we are satisfied that there has been no tampering or alteration but it is unfortunate that the Crown should lay its officials open to this sort of suspicion through its negligent omission to file the original forthwith.

We agree that whether it was 5 p.m. or 8 p.m. would not have made much difference except that 8 p.m. is such an unusual hour that there was some suspicion about the correctness of the date, and seeing the want of candour in the Jail Superintendent's report of 19th July 1944 we thought it proper to have all doubts set at rest. The Jail Superintendent forwarded the papers to the Inspector-General of Prisons on 1st October 1943. The Inspector-General made the following endorsement on 7th October 1943 and returned the papers:

Returned The case has already been decided and the question of staying proceeding does not arise.

Now this endorsement was not on the copies supplied to us. We were given a copy of the original memorandum of the Jail Superintendent to the Inspector-General; but this endorsement was omitted. The endorsement is important for two reasons. First of all, we were, on 13th September 1944, considering the conduct of the Inspector-General of Prisons. Notice had been issued to him to show cause in an application for contempt. He had pleaded his good faith. It is patent that his actions – what he wrote, and what he did, and what he said and what orders he passed – were material and relevant and vital. This withholding of the most crucial order of all might therefore easily have had disastrous consequences for the Inspector-General. The endorsement is also important for another reason. We are now considering the Jail Superintendent's conduct, and it is relevant in this connection to consider whether he was acting on his own responsibility in withholding the application from this Court or was acting on the orders of his superior officer. It is neither here nor there that the endorsement can be construed in two ways. That is for us to decide. But whatever be the meaning of the Inspector-General's endorsement the fact remains that the application was not forwarded and that it was not handed over to this Court till 6th October 1944, more than a year after it was written, despite the complaint made on 12th May 1944, in the present application, despite the report which was called for by this Court on 3rd July 1944, despite the notices issued for contempt on 14th August 1944, and despite the challenges made in the arguments on 12th September 1943.

We do not suggest that this omission was deliberate. Reference to the action taken by the Inspector-General will be found in his report of 21st July 1944. It gives an accurate and true picture of what he did, so there is no question of dishonest suppression. But the principle is wrong. It is not for the Inspector-General to paraphrase his own orders and supply us with his own version of what he said. The fact that it is a clear and accurate paraphrase makes no

difference. We are the judges of his conduct and we are entitled to know at first hand exactly what he did. If the intention is to withhold the original for good reasons or bad, and if the intention is nevertheless to supply us with copies so that we might act on them, at the very least those copies should be certified as true. If they are not relevant, there is no point in filing them. When these deficiencies and irregularities emerged on 6th October 1944, we passed a categorical order on that date calling for an explanation in respect of three specific matters. We did this so that there might be no misunderstanding. In a previous case (*P.Y. Deshpande's habeas corpus application*¹) complaint was made that we had not made ourselves clear and that we had misunderstood the position of the Crown. We accordingly left no room for misunderstanding in this case. First of all, we wanted an explanation about the withholding of Saoji's original application of 22nd September 1943. We wanted to know where and in whose possession it had been since the date of the issue of notice. We wanted to know why it was not filed and who was responsible. We wanted to know why such copies as were supplied were not certified as true copies. So also as regards the Jail Superintendent's memorandum of 24th September 1943 and his endorsement of 1st October 1943. And in particular we wanted to know why the Inspector-General's endorsement on the letter had been suppressed. The third matter related to the Inspector-General's statement in his report dated 21st July 1944 to the effect that the Jail Superintendent's action in forwarding to the trying Magistrates was 'in accordance with the usual procedure'. In answer to these queries the Crown filed a statement signed by the Legal Secretary. The statement commences:

It is respectfully submitted that the facts have not been correctly represented to the Hon'ble High Court with the result that the Hon'ble judges have been under certain misapprehensions.

Now what facts were misrepresented? We set out the matter on which we sought information in our order of 6th October 1944. We have reproduced the substance above. The facts we set out are that the original of Saoji's application of 22nd September 1943 was not filed, that the originals of the Jail Superintendent's memorandum of 24th September 1943 and his endorsement of 1st October 1943 were not filed and that the Inspector-General had made a certain statement in his report. No other fact is referred to. Not one of those facts is inaccurate. What fact then was misrepresented? And who did the misrepresentation? And what misapprehensions were we labouring under? Did we think that the originals had been filed? Did we misquote the Inspector-General's statement in his report? Or what? It is true, we said that these documents had been withheld and that an endorsement had been withheld and that an endorsement had been suppressed. That they were withheld is beyond dispute. Whether the endorsement was deliberately suppressed may be open to question, but we said nothing about the suppression being deliberate. Suppress is a stronger term than withhold, but a reference to any dictionary will show that the word means 'to withhold, keep secret, not reveal'. (We quote from the Concise Oxford Dictionary). The endorsement was withheld, the matter was kept secret and it was not revealed. The expression is strictly accurate. But if that was the one fact which was considered to be inaccurate it would not justify the use of the plural 'facts'. The statement says that facts have not been correctly stated. Proceeding further, the statement endeavours, we gather, to elucidate the misapprehension. In para 5 the statement refers back to our earlier order of 30th September 1943 in which we disposed of the Inspector-General's case and states:

¹The previous impression finding place in this Hon'ble Court's earlier order dated 13th September 1944 that they were received at 8 p.m. is done to a misreading of the endorsement itself.

What does this mean particularly when read in conjunction with the opening passages of this statement except that we had misread the endorsement? We, who had never seen the endorsement, who had never been given the document so that we might see it for ourselves, and who relied on the Advocate-General's statement of fact to us? The learned Advocate General contended in argument that was not the meaning and that there was no intention to convey the impression that we had misread the endorsement. But if language is to have any meaning we find it difficult to see what else the words can be said to import. After all this statement was not drawn up in a hurry. It is a careful and considered statement. However, as the words used import an attack upon us personally, whether that was the intention or not, we will say no more about the matter except this. We had not called for a written argument from the Legal Secretary. The Advocate-General is the proper person to present the Crown's case in argument. We deprecate manuscript eloquence in Court as much as any other judge. Written statements are not for the purposes of argument, and statements filed on behalf of the Crown form no exception to this rule.

It is necessary now to see what this statement says, personal matters aside, because it embodies the Crown's defence to this action. We will deal first with the third of the matters raised in our order of 6th October 1944. It will be remembered that the Jail Superintendent, after making the prisoner write out three copies of his application in his own handwriting, forwarded two of those copies to the Inspector-General of Prisons through the trying Magistrate and asked the Magistrate to make what remarks he liked in the matter. He retained the third. The application, though addressed to this Court, was not forwarded to it by the Jail Superintendent nor did he ask any one else to do so, and this despite the fact that there were three copies of it. The Inspector-General of Prisons justified this action in his report dated 21st July 1944 in these words:

The Superintendent of the Jail Mr Masum Ali promptly forwarded the application to the Court of Mr Razzaque in accordance with the usual procedure as the prayer was for staying proceedings.

This justification was repeated in argument on 12th September 1944. We examined the Jail Manual along with the Advocate-General on that date and were unable to find any justification for this assertion. Accordingly we asked the Advocate-General to look into the matter and let us know more about this procedure at the next hearing. No further light was forthcoming on 6th October 1944. So we placed the position beyond doubt in our order and asked for chapter and verse, particularly as the allegation was not repudiated on behalf of the Crown on 6th October 1944. Then followed the Legal Secretary's statement which was given to us on 27th October 1944. The action is still justified; and all else having failed, and after we had questioned its propriety, we are told that it is 'a matter of commonsense'. Again as this reflects on us personally we refrain from comment. But it is necessary for us to examine the position.

First, let us be clear as to what the application was. The prayer was for a stay of proceeding until the applicant could instruct a pleader, but the application was one for revision and could be nothing else. It is not so called but the body of the application makes that clear. We have already set out its substance. The complaint is that the applicant had not been afforded a proper opportunity of defending himself and that the case had been fixed for delivery of judgment of 25th September 1943. The application was in substance one for revision of the order fixing the case for delivery of judgment without giving the applicant a proper chance of defending himself. The applicant explains at the end of the application that 'the undersigned

being not pleader might have committed some mistakes in the line of approach. If so, your Lordships will excuse him'.

Almost any legal practitioner, even a most junior one, would have labelled it an application for revision, had he been asked to deal with it. Under S. 435, Criminal P.C., the High Court has power to call for and examine the proceedings of any inferior criminal Court, not only to satisfy itself as to the correctness and legality of the finding, sentence or order, but also as to 'the regularity of any proceedings of such inferior Court'. And when it does so, its power to act is governed by S. 439, the revisional section: see 47 Mad. 722 at pp. 724 and 725, 20 Bom. 543 at p. 545 and 22 Cal. 131 at p. 138. It is beyond question then that the application was one for revision, that it sought to invoke the revisional jurisdiction of this Court, that this Court had power and authority to entertain it under S. 439, and that it has no other power to deal with a matter of this kind except in revision under S.439. Now whatever the Jail Superintendent's advisers may now choose to call this application, he had no doubts in his mind about its character. We have already quoted his memorandum of 24th September 1943 to the trying Magistrate which is headed:

'Subject: revision application etc.'

And the opening sentence of which reads:

'In forwarding herewith the revision application of etc.'

We have also quoted his communication dated 24th September 1943 to the Inspector-General of Prisons where he heads the communication:

'Revision application of etc.'

Not only does this accurately describe the legal nature of the application but it shows that the Jail Superintendent appreciated this aright. The Inspector-General stated in his report of 21st July 1944 that as the application was for a stay of proceedings the Jail Superintendent's action in forwarding a petition addressed to the High Court to the trying Magistrate instead of to the High Court was 'in accordance with the usual procedure'. Being unaware of any such procedure we wanted particulars. No such procedure is to be found in the Jail Manual. The learned Advocate-General was unable to enlighten us on 6th October 1944, so we gave him time to find out exactly what this procedure is and where it is to be found. We also said in our order:

And in any event we shall require some five or six instances in which this has been done. Particularly in connection with applications addressed to the High Court.

When we heard the matter again on 27th October 1944, after an interval of three weeks, not one instance was produced. It will be seen that we afforded the widest possible scope for the production of instances. Interlocutory applications are not sometimes addressed to the District Magistrate, sometimes to the Sessions Judge, and at others to this Court. But in spite of the fact that the procedure was said to be 'usual' not a single instance could be discovered in the course of these three weeks. In the Legal Secretary's long and argumentative statement he says:

I am, however, instructed to invite attention to the fact that the usual procedure is relatable to the position of B.N. Saoji as an undertrial then unrepresented by counsel.

We have no objection to this limitation. All we wanted was clarification of the statement and chapter and verse. It turns out that there are no written instructions. If not, and if the procedure is 'usual', there must be instances of it. As we have said, in spite of ample opportunity

for the production of instances, not a single one was furnished. But despite that the assertion that the procedure was 'usual' was adhered to. The Legal Secretary's statement continues 'The statement represents the experience of the Inspector-General, Prisons, in many years' jail administration'. If so, one would have thought this the production of instances would have been easy. But this statement was vague. We therefore asked the Advocate-General what the word 'many' was intended to import. At first he said something like 33 years experience. Later he said he could not give even a rough idea but was sure that 'many' could not mean just two or three and that it must be much more than that.

Next we asked about the experience of other Inspector-General and were informed that the usual procedure related to the usual practice of this particular Inspector-General. That narrows the field of inquiry considerably and places an unaccustomed gloss on the meaning of 'usual'. The Legal Secretary's statement after setting out that there are no written instructions continues:

It is therefore a matter of unwritten practice based on common sense that when an unrepresented undertrial makes a petition to a Court whether as original Court or a superior Court, it is forwarded for disposal or action to the trial Court as the first Court is entitled to know what the prisoner undertrial is seeking.

Here we have an action for contempt. A petition for revision against an interlocutory order of a lower Court and the regularity of its proceedings in a Criminal trial is addressed to this Court. It is handed over to the jail authorities. It is not forwarded to this Court. It is withheld. This Court takes cognizance of the matter, issues notice, and after hearing arguments on behalf of the Crown is told that that is the usual practice. The Court is not satisfied either as to the fact of the practice or as to its propriety. It demands an explanation. It calls for instances of the practice. When not a single instance is forthcoming, this Court is told that it is common sense that a petition for revision addressed to this Court should be sent not to this Court for disposal, or even for information, but to the trial Court whose order and proceedings are under challenge, not for information, but for disposal and action. There is not a word of apology. Not a syllable of regret. No expression of contrition. But justification. That is the answer of the Crown in this province, solemnly made in writing after three weeks of deliberation. One wonders where the High Court comes in at all according to the Crown.

We say there is not a syllable of regret, but there is a matter of fact an expression of regret at the end of the statement — we shall deal with that later. But it does not cover this. There is not a word of regret for this. We are at a loss to know how to characterize this. But for the High Court to be told in answer to its remonstrances that it is common sense that revision petitions addressed to this Court for redress against wrongful or illegal action by a trial Court should be sent to the trial Court for disposal or for action is not, in our opinion, either a courteous or a proper answer. One knows that the powers of the High Court have been considerably curtailed under certain Ordinances but things have not reached this pass.

All Judges are familiar with the normal procedure in applications for revision, and for stay and in other interlocutory matters, both in civil and in criminal proceedings. No question of presenting such applications to the trial Court for disposal or for action arises, or can arise and it makes no difference whether the applicant is represented by counsel or not, and whether he is in jail or is free. After this follows a statement to the effect that Saoji, being a security prisoner as well as an undefended undertrial prisoner occupied a dual capacity and that therefore in these circumstances it is not possible to produce corresponding instances. This is nothing but a quibble. We never asked for corresponding instances. We took it for granted

that as assertion that the Jail Superintendent had acted in accordance with the 'usual procedure' meant something. If the procedure was usual it is evident that there must be instances of it. We asked for five or six instances. This is no answer to our request. Then the Legal Secretary states:

There is however the fact that many *habeas corpus* petitions have been forwarded to this Court, and there are also attached copies of memo on applications of this type which will show the procedure to be followed regarding all petitions from security prisoners no matter to whom addressed. The only difference in this case was the assertion of an additional line of communication namely the trying Magistrate which was related to Saoji's petition as an undertrial.

We are unable to understand what *habeas corpus* petitions have to do with the question. No trial Court is involved in a *habeas corpus* petition. That is petition which is addressed direct to this Court, and as far as we know, such petitions have always been forwarded. What possible bearing that has on the practice set up about forwarding petitions addressed to this Court, to the trial Court we are unable to fathom. Moreover, except for one *habeas corpus* petition in the year 1938, there have been no petitions until the last year and a half. That petition (the one in 1938) was filed in the Court direct. As regards recent *habeas corpus* applications the practice at first was to send them direct to this Court from the jail. This was changed for a time and in the interval the petitions were forwarded through the Chief Secretary to Government, but latterly the original practice has been restored and such petitions now come direct. As a matter of fact we have no quarrel with the channel through which petitions are to come, provided they do come and provided there is no delay. We have no quarrel with that; what we challenge is the untrue and unfounded assertion that it is the practice to send such applications or any other application for that matter addressed to this Court, to the trial Court without any effort to ensure that they reach this Court.

In the end after repeated questions from the Bench the learned Advocate-General was forced to concede that this case is the first instance in which a petition addressed to this Court, or for that matter to any appellate or revisional Court, has been sent to the trial Court, either for 'disposal' or for 'action' or 'for such remarks as you may like to make on it'. To say that this solitary instance constitutes a practice of many years based on common sense and to persist in saying it even after opportunity is afforded to acknowledge the error and set it right, is perverse. A more recklessly negligent statement would be difficult to find — and that made not by some illiterate and ignorant litigant but by the Crown after serious deliberation and consultation with its law officers. Ordinary litigants who are required to verify their statements and who, after opportunity for due deliberation make false statements of this character recklessly, not caring whether they be true or false lay themselves open to a criminal prosecution for perjury.

On 31st October 1944, four days after this case was closed for orders (arguments were concluded on 27th October 1944, and the case was closed for orders on the same day), and after almost the whole of the draft of this order was ready the learned Advocate-General came to us and informed us that he had at last been able to discover another instance of this 'usual' practice spread over the many years of the Inspector-General's wide experience. He stated that he now had two instances to show us. One the present matter, the other a bail application made by the same applicant on 17th January 1944. We find it difficult to be patient with the attitude we have met in this and other cases. It is bad enough that judicial time should be wasted in dealing with frivolous or worse, we do not know which, contentions by the Crown,

but for an officer of the Crown to come to us after all is over, after three hearing spread over an interval of six weeks (12th September 1944 to 27th October 1944) and ask us to reconsider the question on the ground of discovery of important matter to which our attention should be drawn and then to discover that the new matter is as frivolous as the rest strains our endurance to the breaking point.

Even if what the learned Advocate-General said was correct two instances would not constitute a practice any more than one swallow, or even two, makes a summer, nor do two wrongs make a right. But an instance after the one complained of can hardly be quoted as an instance of practice justifying a prior act. The application we are concerned with here was made on 22nd September 1943. The instance now quoted to us is dated 17th January 1944. But that apart, this so-called instance is not an instance at all. The application with which the present proceedings are concerned arose out of petition dated 22nd September 1943 for revision of an interlocutory order. That petition was withheld and judgment was delivered. Saoji filed an appeal to the Sessions judge. The appeal was dismissed on 13th January 1944, pending the making of petition for revision. He explained that he was coming up in revision but was obliged to wait for a copy of the judgment. This bail application of 17th January 1944, is the second instance now quoted.

It is not an instance because it has no connection with a lower Court, nor was it ever sent to a lower Court. It was sent instead to the Under Secretary to Government in the jail Department and there it staved till 10th February 1944, and there it would probably have staved for ever had this Court not taken action. On 2nd February 1944, the applicant filed his application for revision and notices were issued to the District Magistrate on 3rd February 1944. On the same day as the application for revision, namely, on 2nd February 1944, the applicant filed a second application for bail through counsel. Notices were ordered to issue to the Crown on this second application on 4th February 1944, and it was not until after receipt of these notices that the Under Secretary thought fit to forward the hitherto suppressed application of 17th January 1944. It was forwarded on 10th February 1944. That is anything but an instance of the mythical practice relied on. The statement of the Legal Secretary has another surprising passage. It reads:

The Inspector-General of Prisons was misled by the prayer in the petition which was for stay of proceedings and the impossibility of giving effect to it, with the result that he overlooked the address to this Hon'ble Court.

This is not what the Inspector-General said in his report dated 21st July 1944. There he said: 'As the proceedings which the prisoner requested the High Court to stay were all over and judgment delivered on 30th September 1943. I returned the petition to the jail Superintendent.

There is not a syllable here to suggest that he was misled by the prayer and it is impossible that he could have been. Moreover, the covering letter to him is headed: 'Revision application of security prisoner Balkrishna Narayan Saoji addressed to the High Court'. We will deal next with an important issue which this statement of the Legal Secretary raises regarding the dual character of security prisoners who were also prosecuted for offences. It seems to be the underlying assumption that a man on trial for a Criminal offence is not entitled to the usual rights and privileges of an accused person if he happens to be a security prisoner. Nothing could be more ill founded. We have dealt at length with this in *Re. P.Y. Deshpande's habeas corpus petition. Misc. Criminal Case No. 70 of 1944*² Under the Defence of India Act the

procedure to be followed even in the matter of security prisoners is the procedure laid down in the Criminal Procedure Code. The Crown is not bound to prosecute but if it does, then the accused is entitled to defend himself. Nothing is taken away except that in a matter touching bail certain reservations are made.

Think for a moment what this contention would mean if pushed to its logical conclusion. A police constable with a grudge against a man could arrest him under R. 129 and detain him. He could next bring an unfounded charge for murder against him and in given circumstances might succeed in inducing the authorities to prosecute. He might also succeed in persuading some Sub-Divisional Magistrate to make the accused a security prisoner under R. 26. Such unaccustomed powers have been conferred even on Sub-Divisional Magistrates in this Province: see I.L.R. (1943) Nag. 154 at p. 171. Once that was done the man would become a security prisoner, and, if this contention is well founded, he would not be entitled to the usual privileges of an accused in a murder trial. Counsel of his choice could be denied to him and he would not be permitted to instruct more than one counsel in any event. He would not be permitted to come to this Court for redress against arbitrary or illegal action by the trial Court. It would be 'common sense', according to this contention, that all such petitions should be disposed of by the trial Court and withheld from this Court. After conviction, if conviction should ensue, even if he is sentenced to death, his petition for appeal could be withheld. It would, we gather, be commonsense for the trial Court to dispose of it provided the man is security prisoner. He could then be hanged at leisure. An impossible conclusion. We fail to see what his status as a security prisoner has to do with the matter. But it is argued, that was what the jail Superintendent thought. We can only determine what he thought from what he said. There is not a word about any such confusion in his mind in his report dated 19th July 1944. The only explanation offered there is one we held to be false, namely that:

It was forwarded by me to the Court of Mr Razzaque . . . for being forwarded to the High Court through the Inspector General of Prisons, C.P. and Berar. . . . The idea of sending the petition through Mr Razzaque was that the case of the prisoner may be adjourned till the orders of the High Court on the petition of the prisoner were received.

Even in his belated explanation to this Court dated 13th October 1944, he does not put this forward as his excuse for sending the application to the trying Magistrate in the first instance. That is the explanation offered for forwarding it to the Inspector-General of Prisons after it was received back from the Magistrate and it had become too late to stay proceedings because judgment had been delivered. But even if this was the reason it would make no difference to the offence of contempt. It would only be relevant regarding the measure of punishment. We quote Lord Haldane in 1914 A.C. 808:

Between 'malice in fact' and 'malice in law' there is a broad distinction which is not peculiar to any particular system of jurisprudence. A person who inflicts an injury upon another person in contravention of the law is not allowed to say that he did so with an innocent mind: he is taken to know the law, and he must act within the law. He may therefore be guilty of 'malice in law' although so far as the state of his mind is concerned, he acts ignorantly and in that sense innocently.

Now concerning the facts relating to the omission to hand over Saoji's original application of 22nd September 1943 to this Court even after this Court had called for a report, and more particularly after this Court had issued notice to show cause against the proceedings for contempt, the facts given disclose negligence, but not, we think, dishonesty. And the explanation regarding

the omission to forward either the Inspector-General's order dated 7th October 1943, or a copy of it discloses equal negligence. Had the matter rested there we would not have said anything more about it. But the Legal Secretary is not content with that. He proceeds to justify the action and states: 'There was thus no question of suppressing or withholding it'. That is a strange statement when these documents have admittedly been withheld whatever the reason. It is also an impertinent answer to give this Court when its Judges raise the question and raise it very seriously. If there was no question of withholding these documents what are we enquiring into? We are accustomed to recklessly wild statements from ignorant litigants who are hopelessly cornered but we are entitled to greater care and more courtesy from the law officers of the Crown. Then the Legal Secretary continues: 'The copies produced were solely a matter of the clerical staff'. This again is surprising. In an important matter touching the honour, honesty and integrity of high Government officers the Legal Secretary states in effect that it is no business of anybody but the clerical staff to see what documents are given to this Court and what copies should be forwarded. We find it difficult to determine whether this is incompetence or impertinence. About the only complaint which cannot be made regarding the Legal Secretary's statement taken as a whole is that it lacks frankness. There is certainly no lack of candour. Indeed the learned Advocate-General claimed that as one of its virtue. He is right. Then follows another passage: 'No copies of documents were asked for or required and therefore no question of a certificate arises'.

It appears to be the impression of some officers of the Provincial Government, from the Legal Secretary down to some of its Deputy Commissioners, and perhaps even lower still, that it is the business of this Court to find out what documents are relevant and necessary on the official side when questions touching Government or its officers are in issue and that it is its duty to go round from office to office and from official to official until finally to obtain something which will justify a decision against those who have the temerity to question official acts. It does not seem to strike those gentlemen that the Courts are here to decide impartially between the parties before them and that it is the duty and business of the parties to present such documents and such evidence as they consider relevant and necessary for their respective case: that it is their duty and not the Courts' to present their own cases. Our conclusion on all the material placed before us, and we have examined it exhaustively, is that the Jail Superintendent deliberately withheld the application for revision dated 22nd September 1943, addressed to this Court and intended for this Court, from this Court. He kept the application, despite its urgent character, with him during the working hours of at least two days the 23rd and the 24th. After pondering over the situation for two days he deliberately withheld it from this Court and forwarded it instead to his superior officer, the Inspector-General of Prisons, through the trying Magistrate. In so doing he had no intention that it should reach this Court and made no effort to see that it did or should. His intention was that his superior officer, the Inspector-General should dispose of the document and relieve him of all responsibility. His explanation that he intended the document to be sent to this Court and that his reason for sending it to the trial Court was to enable it to stay proceedings pending the orders of this Court, we find to be false. He had three copies of the application with him, and had that been his intention he would have forwarded one to the High Court direct, or at the least he would have marked one of the two copies sent to the trying Magistrate for the High Court and the other for the Inspector-General of Prisons. That is the first set of facts.

He had the document in his possession and control for a second time on 30th September 1943 when it was returned to him by the trying Magistrate. He still withheld it from this Court

and sent it instead to his superior officer the Inspector-General. For a second time he was instrumental in withholding this document. On the October, 1943 the document came back to him for a third time. He still withheld it. He was not told to keep it. He was not told not to forward it. All that he was told was:

Returned. 'The case has already been decided and the question of staying proceedings does not arise.

He acted on his own responsibility in keeping the document with him and was not acting under orders. The question now is whether these facts constitute contempt. Contempt of Court is an offence. That part of it, known in England as a criminal contempt is a common law misdemeanour in that country: see 7 Halsbury, Halsham edition p. 2. The position in India is the same except that the offence is not called a misdemeanour here and that the punishment is regulated by the Contempt of Courts Act (Act 12 of 1926). We are not concerned in this case with the other branch of the law of contempt relating to procedural contempts. In so far as criminal contempts are concerned, the offence is committed if, among other things, the acts complained of either obstruct, or have a tendency to obstruct, the administration of justice see 7 Halsbury, Halsham edition, p. 2. It is not necessary to establish an actual obstruction or interference. It is enough to show that the acts have a tendency to interfere: see (1889) 58 L.J. Q.B. 490 at p. 102, also 7 Halsbury, Halsham edition p. 9.

What we have to determine then is whether the action of the Jail Superintendent at any one or more of the stages set out above either interfered with or had a tendency to interfere with the administration of justice. The answer depends upon the nature of the application and the powers of the tribunal to which it is addressed to act on it. As we have pointed out above, the application was one for revision. It asked primarily for a stay of proceedings but the body of the application made it plain that there was no prayer for an indefinite stay. What was sought was revision of an order deciding to proceed without affording the applicant adequate opportunity to defend himself.

The powers of this Court to deal with this application are contained in Ss. 435 and 439, Criminal P.C. They are not limited to staying the proceedings. This Court would have had power on the allegation made there to call for and examine the records of the trying Magistrate and satisfy itself about the regularity of the proceedings as well as about the correctness, legality and propriety of the finding and sentence. It had this power under S. 435 and it would unquestionably have exercised it had the application been presented. In fact it did exercise these powers when a later application for revision was presented. The fact that application failed is neither here nor there. The withholding of the application by the action taken on 21st September 1943, prevented this Court from exercising the powers it would unquestionably have exercised had the application been presented to it. The Jail Superintendent's action therefore actually interfered with the administration of justice.

As regards his acts on 30th September 1943, and on 7th October 1943, they were done after the judgment in the Criminal case was delivered. But that would not have made any difference. If the allegations made in that application had been shown to be true, this Court would unquestionably have quashed the proceedings and sentence and would either have directed a retrial or would have discharged or acquitted the accused. The power of this Court to act and to investigate into the matter and to remedy the injustice, if on investigation the allegations were discovered to be well founded was not exhausted by reason of the delivery of the judgment. The withholding of that application prevented this Court from exercising that power. It would unquestionably have exercised it by calling for the records and

investigating into the matter had the application been presented. There was therefore again for a second and a third time, an actual interference with the administration of justice. The contention that there was no interference because judgment had already been delivered is ill founded. The administration of justice is not confined to the consideration of appeals and revisions and to the hearing of interlocutory matters. The High Court possesses a general power of superintendence over the actions of Courts subordinate to it. On its administrative side the power is known as the power of superintendence. On the judicial side it is known as the duty of revision. The High Court can at any stage, of its own motion if it so desires, and certainly when illegalities or irregularities resulting in injustice are brought to its notice, call for the records and examine them 'for the purpose of satisfying itself as to the correctness, legality or propriety of any finding, sentence or order recorded or passed and as to the regularity of any proceedings of such Court'

Nor do its powers end there. Under S. 435 (1) it may also 'when calling for such records, direct that the execution of any sentence be suspended . . . during the examination of the records'

The position of Saoji as a convict and as a security prisoner were very different, and this Court could, despite the delivery of judgment, have stayed execution of the sentence. The High Court's right to have these matters brought to its notice and to examine the record for itself is as much a part of the administration of justice as its duty to hear appeals and revisions and interlocutory applications. So also its right to exercise its powers of administrative superintendence. Now at this point the Jail Superintendent's case differs from that of the Inspector General of Prisons. We have already accepted in the Inspector-General's case his explanation that he acted in ignorance of the law. We have already said that in his case there was room for a layman to believe at the date on which he received the application that it had exhausted itself and that nothing further could be done because judgment had already been delivered. We have not excused him. We have found him guilty of contempt. But in respect of the action to be taken against him we decided for this and other reasons that censure would be enough. The Jail Superintendent's case is different.

In the Jail Superintendent's case he had the application in his hands before judgment was due for pronouncement and he had ample time to forward it to this Court in time for this Court to act upon it. No one could have thought that the application was infructuous at that time. Not even a layman. He deliberately declined to forward it to this Court and sent it elsewhere, not for being forwarded to us, but 'for disposal'. And as regards his action afterwards, when the application twice reached his hands thereafter, he having deliberately brought about the situation in which the application might seem infructuous in a layman's eyes, cannot be permitted to plead his own wrongful act in extenuation of his conduct.

We hold, that inasmuch as the Jail Superintendent deliberately and intentionally on three separate occasions withheld the application from this Court and declined to forward it, he interfered with the administration of justice and is guilty of a criminal contempt. We next have to consider what action we should take against him. In this we have to take into consideration any apology that may have been tendered. The proceedings commenced on 18th May 1944. It is true no action was taken at that stage but an opportunity was afforded for a full and complete apology. Had one been tendered, the matter would doubtless have ended then and there. Courts are always reluctant to proceed in contempt. They are even more reluctant to punish. Except in scandalous and outrageous cases an unconditional apology is ordinarily considered to purge the contempt. Therefore before taking cognizance of the contempt, this

Court merely asked for a report. In answer a number of papers were sent to this Court among them two reports, one from the Inspector-General of Prisons and the other from the Jail Superintendent. In all those papers there was not a single syllable of contrition or regret. There was not even an attempt at an apology. On the contrary, there was a vigorous plea of justification. We need not concern ourselves with the Inspector-General's report any longer because we have already disposed of his case. In the Jail Superintendent's report-it is dated 19th July 1944 — he justifies his conduct and states:

'There was no delay in this office in forwarding the application which was despatched on 24th September 1943, soon after it was received from the prisoner'.

We have found that there was delay. We have found that it was not forwarded 'soon' after its receipt from the prisoner. Then he says:

'There was no interference in the matter by this office'. We have found that there was interference, and serious interference. Not content with justifying his own conduct he goes out of his way to make a serious and unfounded attack on the applicant-an attack which, if true, would render the applicant liable to a criminal prosecution for perjury. He stated: 'From the above it will be seen that the applicant has filed a false affidavit in the High Court'. There is not a sentence, or a syllable or a word in that affidavit which is inaccurate or false or untrue. This attack on the affidavit is as reckless as the rest of the statements of which we have had cause to complain in this order. In view of this we took cognizance and issued notices on 14th August 1944. Under the Contempt of Courts Act, 1926, the maximum sentence is six months simple imprisonment. Accordingly the procedure in India is that which is followed in summons case. In the application the facts are set out and a copy of that application was served on the Jail Superintendent. No formal charge was, therefore, necessary and the Jail Superintendent had ample notice of the case he had to meet.

Arguments were heard on 12th September 1944. Again, there was no attempt at an unconditional apology. We listened in vain for that. Apart from an occasional statement from the Advocate-General to the effect that his clients were very sorry and intended no disrespect, all we heard was the same justification as we found in the reports. Nothing that was said in them was repudiated. At the end of the arguments we reminded him about the importance of an apology in contempt case. Then we dictated judgment in the Inspector-General's case and called for further information because of the statements made in the reports which were still persisted in. In dealing with the Inspector General's case we made it clear what the issue was. The order in that case was signed on 13th September 1944. The case was next heard on 6th October 1944. Even then there was no unconditional apology — only the same formula about regret coupled with the same attempts at justification. Again, nothing in the reports was repudiated. Accordingly we drew up a formal order setting out the points which had to be met, and also in the course of the discussion drew the Advocate-General's attention to the importance of an apology and drew attention to the previous rulings of one of us in the matter.

At the commencement of his argument on 27th October 1944 the learned Advocate-General prefaced his contentions by stating that he offered an apology on behalf of everybody in this case including the Jail Superintendent, but then went on to justify the Jail Superintendent's action in the same way as the Legal Secretary had done in his written statement and the Crown on behalf of its servants. Though questioned about it closely by the Bench he did not withdraw or repudiate the statement or any part of it. On the contrary, he came several days after the case was closed for orders and put forward what he called a further instance in support of the statement.

He had also gone through the same formula of an apology at the hearing on 12th October 1944 and we reminded him that the apology had to come from the client and that the papers filed up till that date disclosed no contrition. After that the Legal Secretary's statement was put in and instead of improving the situation aggravated it. Towards the end of the argument the learned Advocate-General said that it must be remarked that the Legal Secretary's statement related to the Inspector-General's explanation and not to the Jail Superintendent's and that we should draw a distinction between the two. We are unable to do so. After disposing of the Inspector-General's case, only one case was before us for consideration and we told the Advocate-General that explicitly at the commencement of the arguments on the 27th. This statement was put forward after due deliberation as the answer to the Jail Superintendent's case. His actions were supported on these grounds and he made no attempt to repudiate these untrue pleas put forward on his behalf. We are unable to accept the Advocate-General's service to the formula of an apology as a genuine apology in the face of the strenuous attempts at justification.

Saoji's application of 12th May 1944 set out all the relevant facts. This was supported by an affidavit. A copy of the application was sent to the jail authorities and they were directed to furnish this Court with a report. Then followed our order of 6th October 1944 which focussed attention on the points at issue, and when read with our order of 13th September 1944 in the Inspector-General's case, could not have left the Jail Superintendent or his advisers in any doubt as to the case he had to meet. The case was then heard on 27th October 1944, and the statement and the papers we have referred to above were put in. We have dealt at length with the attempts at justification -- or rather we have dealt with the more prominent features of the statement in that regard. There are other portions also. But we need not examine them. We have shown enough to disclose the nature and general tenor of the statement. The statement concludes with these words:

In conclusion it is admitted that whatever was done concerning this petition of B.N. Saoji was done in good faith without any contemplation of discourtesy or disrespect. The only delay was in the Magistrate's Court and the failure to forward the petition to the High Court was partly the result of genuine misunderstanding and partly of omission in clerical procedure, which may well be related to the stress of work during these days, and the many onerous and important duties that have to be undertaken. It is greatly to be regretted that this combination of circumstances has led to a false view by the petitioner and to apparent misapprehension by this Hon'ble Court. In furtherance of this statement, individual expressions of regret are also filed.

Here again, instead of acknowledging error there is justification coupled with attacks (a) on the Magistrate, (b) on the clerical staff, or so we gather, particularly when read in conjunction with para 12 of the statement, (c) on the petitioner and (d) on this Court. It is a little difficult to know what is meant by an 'apparent misapprehension'. Either we are under a misapprehension or we are not. And if we are not, and our misapprehension is only apparent, then this is a worse attack on us than ever. Then follows the Jail Superintendent's apology. As we have said, his statement starts out with a justification, and there is not a word of regret for his initial action which was the worst and most inexcusable of all because at that time no one could have thought that the application was infructuous. The only apology is the following.

I have never at any time been of mind to deceive, or act in an improper manner. If nevertheless the Hon'ble judges have been given the impression that I have willfully been at fault or lacking in courtesy to the Hon'ble the High Court I can humbly assure them that such is not the case and I have not on

this occasion nor on any other occasion even contemplated anything lacking in respect. I can only express regret for not realising I should have forwarded the petition of B.N. Saoji when it was returned to me by the Inspector-General, Prisons, and that this has led the Hon'ble Judges to think I may have treated the Hon'ble Court with disrespect.

As one of us dealt in very strong terms with this sort of apology in I.L.R. (1941) Nag. 304 and as even that decision does not seem to have carried the slightest weight despite pointed attention having been drawn to it on 6th October 1944, we will not repeat what was said there but will quote instead from an English decision. But before doing so, we will pause to observe that these apologies were not made on the spur of the moment but after two and a half months opportunity for deliberation from the issue of notice to show cause, three weeks after the matter, together with the previous Nagpur decision had been pointedly brought to the notice of the Advocate-General, and after full consultation with the legal advisers of the Crown. The decision from which we desire to quote is (1864) 33 L.J. Ch. 294 at p. 298. The Judge is Kindersley V.C. This is what he said:

There being no doubt about the contempt, the question is how is it to be visited? It is always a disagreeable office to have to commit a party to prison, but the Court must not therefore shrink from it, if justice requires that course in order to hold a man up as a warning to others, and I have no alternative but to commit him. I have the less hesitation in doing so from the course he has pursued; he has either been unfortunately advised or, having received good advice, has not thought fit to follow it. Instead of doing what any reasonable man would have done, and any legal adviser would have counselled and by an affidavit expressing regret and propitiating the justice of the Court, he has vindicated the truth of part of his statements, and instructed counsel to argue that there was no contempt and that he had a right to publish the article, but if the Court thought there was a contempt, then he would express his regret which is of course, no expression of regret at all. He must certainly be committed to prison, where no doubt he will do that which will enable the Court to discharge him at the earliest possible moment, which, I need not say, I shall be only too happy to do having no personal feeling on the subject.

The case before us is far worse than that. Whether or not the Jail Superintendent was badly advised there was no doubt about our attitude, particularly after our order in the Inspector-General's case. We have afforded ample opportunity for an apology and went out of our way to point to a previous decision of this Court. In the English case insistence in contending that there was no contempt was considered sufficient aggravation to justify committal to prison. Here there is much worse. False statements have been made. Wholly unfounded attacks imputing criminality have been made on the affidavit made by the applicant Saojee, and attacks have been made on the trying Magistrate. We have been treated with scant courtesy, and a statement offensive in tone and temper and reckless in its disregard for truth has been put in after careful deliberation and thought. It is impossible for us to overlook this persistent aggravation of the contempt. It is all the more impossible because of the tendency we have marked of late in more cases than one of attempts to ignore the authority of this Court and trifle with it. It is necessary to make an example. Leniency has been misunderstood in the past and will therefore be misplaced. Forbearance and patience only evoke worse and worse recklessness. We accordingly sentence the Jail Superintendent to a fine of Rs 250 under S.3 Contempt of Courts Act. (Act 120 of 1926) and in default to 14 days simple imprisonment. A far humbler man was sentenced to a fine of Rs 500 in I.L.R. (1941) Nag. 304 a warning which has passed unheeded and which, after due deliberation, the Jail Superintendent and

his advisers have thought fit deliberately to ignore. We refrain from taking more severe action and from imposing a sentence of imprisonment because it is evident that a man in the Jail Superintendent's position would hardly have adopted this wholly wrong attitude had he not been encouraged in it tacitly or otherwise by those in higher authority. We trust this will serve as a warning and as an example.

Order accordingly

R.K.

1 and 2. Doc. 249

256: Government of Punjab to the Government of India – Caveeshars' Case

File No. 44/52/44 – Home Poll (I)
[NAI]

Secret

From
A.A. MacDonald Esquire, O.B.E., I.C.S.
Home Secretary to Government, Punjab.

To
The Deputy secretary to the Government of
India, Home Department, New Delhi.

No. 9805-BDSB

dated Lahore the 7th November, 1944.

Sir,

In continuation of Punjab Government secret letter No. 8939-BDSB, dated the 24th October, 1944, I am directed to enclose for your information a copy of a report dated the 31st October, 1944 submitted by Ch. Mohammad Inspector of this Department, who was deputed to supervise the interview in Sub-Jail, Dharamsala, on the 29th October, 1944, between Central Government security prisoner Sardul Singh Caveeshar and S. Harbans Singh Advocate in connection with the *habeas corpus* petition of the prisoner.

I have the honour to be
Sir,

Your most obedient servant

A.A. MacDonald
Home Secretary to Government, Punjab.

Enclosure – A Report

Caveeshar's interview with his counsel, S. Harbans Singh, Bar-at-law, lasted from 2 p.m. to 4.20 p.m. on 29.10.44. The warning given at the outset that the talk should be confined to the

habeas corpus petition was strictly adhered to throughout. Both the counsel and I took copious notes.

The counsel had with him copies of (i) an affidavit of Mr F.C. Bourne dated 6th September, 1944, filed in the High Court, Lahore, in connection with Caveeshar's petition (ii) letter No. 44/52/44 – Poll (I) Government of India, Home Department, New Delhi, dated 1st July, 1944,² over the signature of Mr Vishnu Sahay, Joint Secretary, Government of India and (iii) letter No. 44/52/44 – Poll (I) Government of India, Home Department, New Delhi dated 2nd September, 1944.³ Caveeshar had already had with him copies of the two letters. He insisted for a copy of the affidavit referred to at (1) above. The affidavit which had a bearing on the petition was allowed to be shown to him. He was told that a copy of the affidavit was no longer necessary for the purposes of the present interview and that if he was still keen to have it he could apply for it.

Caveeshar: There are certain instructions which I would like to communicate to my counsel beyond the hearing of any one else, I, however, do not mind any one supervising the interview from a distance from where he cannot hear us. The interview is in the hearing and presence of Inspector C.I.D. who is taking down verbatim notes of my instructions and who says that no interview can be allowed except within his hearing in spite of my readiness to give him an undertaking that if allowed to give instructions within his view but not within his hearing, I shall not talk anything beyond what has a direct bearing on my petition. In these circumstances I cannot give full instructions and whatever I am giving I am giving under protest.

Have you seen an order of the Division Bench of the Lahore High Court consisting of Mr Justice Blacker and Mr Justice Munn which appeared in the *Tribune* (Dak Edition – page 8) dated 20th June, 1943? According to this order I could appear in the court in spite of Government's objection. Here is the relevant newspaper cutting⁴ which I am keeping on my file. You please make a note of it and get it from Lahore for your future reference and guidance.

My position is that Ordinance III of 1944 makes no difference in regard to the powers of the High Court to order my production in court to conduct the hearing of my petition. So the order of Mr Justice Blacker issued on the 11th of September, 1944, ex parte without hearing me and in my absence and without my having been represented goes against the Division Bench order referred to above and is wrong. My contention is that there are facts, besides law points, in my petition regarding which I would like to give instructions and, if necessary, evidence. I cannot give instructions in the circumstances in which the interview has been allowed.

There is an instance in which the flaws in my detention have been remedied or at least an attempt has been made to remedy them. The instance is the judgment of the Division Bench of the Lahore Court referred to in para 3 which reads 'Order of detention does not expressly lay down that the detenu shall on no account be removed from the sub-jail'. Order of Mr Tottenham dated the 2nd of September, 1944,⁵ by putting the words 'until further order' is an attempt to circumvent the decision of the Division Bench of the High Court and prevent my production.

They applied in my absence that my petition should be heard in camera. Oppose this on the ground that there are facts as well as law points connected with the orders so far passed. By facts I mean facts regarding the circumstances under which these orders were passed at a time when there were no political, military or other objectionable activities on my part under discussion prior to my arrest.

Counsel: Mr Justice Ram Lal has said that interest of justice is not jeopardized by a hearing in camera.

Caveeshar: But it should be heard in camera only when on hearing it in public it is found that interests of justice are jeopardized. My previous petition which was heard in camera does not and should not be taken by them to constitute an precedent to justify the hearing of my present petition in camera because the grounds in that case were so different that their disclosure could have been considered of political importance. Can I get a copy of the proceedings in camera?

Counsel: Apply for this. I cannot give instructions.

Caveeshar: I will now read out to you my *habeas corpus* petition para by para with a view to enable you to see for yourself that the position taken up in Mr F.C. Bourne's affidavit is wrong and untenable.

My arrest u/r 129 could be valid only if there were in my case any grounds answering the conditions given in this rule. They used rule 129 simply to anticipate my arrest by a few hours or days because orders of Government of India for my arrest u/r 26 had been passed that very day. By 'they' I mean S.P., D.S.P., and other officers of the Punjab C.I.D. Order of my detention in the Lahore Fort is material in this case because it is different from the one passed by the Government of India. It is because of this difference in the orders that I have not been supplied with a copy of the order of my detention in the Lahore Fort in spite of the fact that I applied for it.

Counsel: They say what they are concerned with is the issue whether your detention is legal or illegal.

Caveeshar: (On my objection that he was going off the track said that)

My present detention is inextricably connected with my detention in the Lahore Fort which is one of the series of links set out in my petition.

(Then addressing his Counsel, he continued)

They do not stick to any one order. Pin them down to one position and attack. My detention here in the Dharamsala jail is under orders of the Punjab Government. The orders of the Government of India filed in the court came into existence after I had filed my petition. The order dated 1st July, 1944, refers to the order dated 9th March, 1942, which, it says, will continue to remain in force. Copy of the order dated 9th March was not supplied to me originally but I later got its unauthorized copy through my lawyer who got it from the file in the High Court.

I want you to argue that the order passed by the Government of India on the 9th March was illegal. For this refer to the Full Bench judgment of the Lahore High Court in the case of Durga Das Khanna – vide 1944 Lahore 33. In this case the judgment of the Full Bench was that the signatures of Chief Secretary on behalf of the Governor were illegal and did not show that it was the Governor who was personally satisfied that the detention of the person in question was justified. In fact it was the Chief Secretary himself, and not the Governor, who was satisfied that there were reasons justifying the detention of the person in question. Similarly it is for you to make out a case that the orders passed for my detention over the signatures of Mr Tottenham, then Additional Secretary to the Government of India meant that my case had not been considered by the Governor General himself, and then Additional Secretary's order is almost in the same form as the one passed by the Chief Secretary which was held invalid by the Full Bench in Khanna's case. It was after this decision of the Full Bench that the Governor authorized the Chief Secretary that his signatures virtually represented

the personal satisfaction of the Governor. Please see that the Governor General has not so far similarly authorized the Additional Secretary. Moreover in Khanna's case Government validated the order. The order in my case was not only prior to it but also has not been validated as yet. In the cases of all detenus, Government have sent new detention orders from Chief Secretary. Please see that they sent me such an order after I had filed my petition. I say that my position continues to be that of Khanna and I do not think that the authority of Government of India anyway materially differs from that of the Punjab Government.

My contention was, as it still is, that Police came to my place at Lahore at 9 a.m. and arrested me u/r 129 at 10 a.m. on the 9th March, 1942. The Government of India order arresting me u/r 26 is dated 9th March, that is the same day of my arrest at Lahore u/r 129. I can prove on the authority of an M.L.A. and other respectables who were present, that I was told I was arrested u/r 129 and that if on enquiry nothing was found against me I would be released. Since the orders of the Government of the Punjab u/r 129 I contend that the orders of the Government of India were not, as they could not be, passed by the Government of India on a report from the Government of Punjab. I was ill that day. No questions were asked of me and no replies were given by me on that day when I was taken to the Fort. Government's present reply that the Punjab Government arrested me in compliance with a telegram from the Government of India is an afterthought and is contradictory to what the officers, who arrested me, represented at the time of my arrest in the presence of responsible persons.

Get copies of the orders detaining me in the Lahore Fort and later the Campbellpur Jail. My point is that *my friend in the Central Government* got orders for my release issued. I saw a copy of these orders at Campbellpur. On this the Punjab Government passed two orders on 24.3.43 — one releasing me from the Campbellpur Jail and the other ordering my detention in the Dharamsala Sub-jail. My contention is that the Government of India order of 9th March, for my arrest was vacated by the Government of India order for release which rendered the original order ineffective. It was given in the newspapers that I was to be released and restricted in Bargain. I have got a copy of the Punjab Government order No. 5933 B dated 24.3.1943 detaining me at Dharamsala. But I have not been given a copy of my release order passed by the Punjab Government the same day. Both these orders were sent by the Chief Secretary to the Government of Punjab to Home Secretary who passed them on to I.G. Prisons. It appears that while I.G. Prisons sent both these orders to the Campbellpur Jail, he sent only my detention order to the Dharamsala jail. I was actually transferred to Dharamsala before both these orders of my release and detention came into existence.

Counsel: Government will say that Government of India had nothing to do with your case. It was Punjab Government who released you and then detained you for reasons known to them.

Caveeshar: In response to my application asking for a copy of the Government of India order dated 9.3.43 Mr Wace, D.I.G./C.I.D., sent me a letter intimating me that my application had been rejected and that I could be referred to the Punjab Government Order dated 9.4.43. Apply for a copy of Mr Wace's letter dated 17.5.43.

Counsel: How do they call it an order dated 9.4.43 which is nothing but an endorsement by the Home Secretary.

Caveeshar: My contention is that I was not shown a copy of my release order and that, instead I was referred to the present order of my detention which is nothing but equivalent to the order in Khanna's case. Before I sent this petition there was no order in existence for

my detention as the Government of India order dated the 9th of March had been vacated by the Chief Secretary's order of release and that Chief Secretary's order for my detention at Dharamsala had been invalidated by the Full Bench judgment in Khanna's case.

Punjab Government had no information about my prejudicial activities. When a question was asked in the Assembly Sir Sikandar Hyat Khan said that Punjab Government had nothing against me.

Counsel: If they arrested you u/r 129 under orders of Government of India, then?

Careeshar: See the telegram and get it on record, see the date and time of my arrest as well as of the telegram. But then they did not arrest me u/r 26 to start with. A copy of order dated 24.3.44. detaining me at Dharamsala is with me but copies of the orders for my detention at the Fort and the Campbellpur jail and my release were never supplied to me or even shown to me.

I have with me copies of the following orders:

(1) No. 44/52/44 - Poll (I) Government of India dated 27.4.44. intimating me that Government has considered my representation dated 20.3.44. and have decided not to cancel the order under which I am detained and that the order - which? they do not say -- will remain in force till . . . unless extended or revoked u/s 9 of Ordinance III 1944. My contention is that the order which has not been specified herein is invalid even if it refers to either the Chief Secretary's order or to Mr Tottenham's order. My position is that this order is bad because the previous order to which it refers was bad.

(2) No. 44/52/44 - Poll (I) Government of India dated 1.7.44.

Again, this order refers to the order dated 9th March, which had been vacated by the Punjab Government order. This is the most important point and should be fully elaborated.

(3) No. 44/52/44 - Poll (I) Government of India dated 2.9.44.

In this order no particulars, date etc., are given of the order to which reference is made in it. I say no such order was in existence. There is no reference to any Government of India order. And then any reference to the Punjab Government order would be unreasonable in view of (i) the Full Bench Judgment in Khanna's case and (ii) Sir Sikandar Hyat's reply in the Punjab Assembly that the Punjab Government had nothing against me.

Please consult Kattu, Bhula Bhai Desai and/or K.M. Munshi about my case and ask Mr Jivan Lal Kapur to see the assistance, if necessary, of any of these or other prominent lawyers in or outside the Punjab. I shall ask my friends to get into touch with Kapur to fix up and arrange for his and their fees.

Mohd Hussain
Inspector C.I.D.
31.10.44.

- 1, 2, 3 and 4 Not printed
- 5 Not printed
- 6 See Doc. 265



257: Extracts from Fortnightly Report from Bengal for the first half of November 1944

File No. 18/11/44 – Home Poll (I)

[NAI]

Provincial Press Adviser's Report

a. The judgment delivered by the judicial Committee of the Privy Council on the validity of special courts established under Ordinance II of 1942, was criticised in the 'Nationalist Press'. The judgment of the Privy Council has now exposed the utter unreality of the British system of justice established in India. . . . The judgment . . . is another nail-perhaps the final nail-into the coffin of the Government of India Act. Provincial Autonomy has been described as the Governor's Autonomy. Shall we be far wrong if we describe the Government of India Act as the Governor-General's Act?' (*The Nationalist*). 'The situation being what it is, we shudder to think of the reaction that is likely to follow the decision of the Privy Council setting aside the judgments of the High Court of Calcutta and the Federal Court regarding the validity of Ordinance II of 1942. The reasons given by their lordships are even more disturbing than the decision itself' (*The Amrita Bazar Patrika*). 'We do not pretend to sit in judgment over the Privy Council on a point of law, but we are in this connection, reminded of the late Lord Morley's cute' observation about the unlimited sovereignty of the British Parliament, viz., that it could do everything except make a man a woman or a woman a man' (*The Advance*).

1. The main report of the Press Advisor (Appendix I) Contains the following Comment.

The pronouncement of the Privy Council on the validity of the Special Court's Ordinance, 1942, had an unfavourable reception. It was complained that the letter of law had been given greater importance than its spirit; the recognition of the 'unlimited' powers of the Governor General was deplored. "The reasons given by their Lordships are even more disturbing than the decision itself" was a typical comment.

258: Official Notings regarding Krishna Nair's case¹ (dt 15.11.1944–17.11.1944) (extracts)

File No. 22/96/44 – Home Poll (I)

[NAI]

Notes in the Home Dept.²

The 'Congress Responsibility' pamphlet³ was drafted by M/S Olver and Saumarez-Smith, neither of whom is now here. A copy of the judgment of the Addl. Distt. Magistrate in which Krishna Nair was sentenced to 2 Yrs R.I. is put up. The fact that he had been acquitted on appeal to the High Court did come to our notice, but we have not seen the High Court judgement, nor did the point about revising the particular passage relating to him occur to us. We may perhaps, in reply to (d), say that the statement made in the pamphlet was correct at the time of its publication, and that Govt. do not feel called upon to make any amends. (It is, of course,

open to Krishna Nair to take recourse to the law if he feels aggrieved, but that can be taken care if he makes a move).

A file relating to contempt of court proceedings instituted by Mr Jagat Narain Lal, ex-Parliamentary Secretary in the Congress Ministry in Bihar, in connection with a passage in the same pamphlet, is put up. It will perhaps do if only pages 11–18 of notes are read. The particular passage is at page 31 of the pamphlet, and it was revised as shown in the typewritten slip attached to the relevant sheet in the copy of the pamphlet put up.

Signed (illegible)

Addl. Secretary
15.11.44

A draft is at page 2.¹ I am not sure of the exact terms of the charge as we have no copy in office. However the passage marked A on p. 2 of the judgement in Delhi gives the general charge if we require as much detail.

2 I spoke to DS (1) about an answer to (d).

G A. Shaw

DS (1) 16.11.44

I have suggested an answer to (d) and amended answers to (a) and (b). I have asked for a copy of the High Court's judgment so that suggested answers to (c) and (d) can be verified though I think from the magistrate's judgment it is almost certain that any acquittal would necessarily be a case of 'benefit of the doubt', as the only evidence was of identification and there was apparently no positive evidence of innocence

F. Cracknell
17.11.44

Addl. Secy.

- 1 See Docs 208, 210 above and 2, 5 and 6 in chapter I Sect. A.
- 2 These nouns (and also in Doc 259) arose out of questions in Assembly (cf Doc 260 below) - (Ed)
- 3 'Congress Responsibility' pamphlet - not printed
- 4 Not printed

259 Official Notings regarding Krishna Nair's case — (continuation of Doc. 258) (dt 17.11.1944–18.11.1944) (extracts)

File No. 22/96/44 – Home Poll (I)
[NAI]

I am not sure of the reply to part (d). The acquittal took place long after the pamphlet was published (or I think after any later editions of it were published, but this should be verified). I would be inclined to say:

The statement in this pamphlet is correct and Govt.'s position in the matter is the same as that of the newspapers which published the conviction at the time. If any future editions of the pamphlet were to be published, the passage in question would be omitted. Meanwhile this question and answer will perhaps serve this purpose that this Honourable Member has in view.

R. Tottenham
17.11.44

I have revised the answers to (b) and (d). A copy of the pamphlet should be put for supplementaries.

R.F. Mudie
Home Member
18.11.44

260: CLA Questions — Krishna Nair's case

File No. 22/96/44 - Home Poll (I)
[NAI]

Question for the Legislative Assembly

676

10.11.44

Home.

21.11.4

Conviction of Mr C. Krishna Nair

Mr Abdul Qaiyum will the Honourable the Home Member please state:

- (a) whether Mr C. Krishna Nair, a congress worker of Narela Gandhi Ashram referred to at page 33 of the official publication 'Congress Responsibilities for Disturbances, 1942-43' was sentenced to two years rigorous imprisonment;
- (b) what the charge against him was;
- (c) whether he applied to the Lahore High Court and with what result and
- (d) if Mr Nair was acquitted, what amends Government propose to make for accusation which stands unproved?

Legislative Assembly
Question No. 676.
22/96/44

(To be answered on the 21st November, 1944.)

Reply to Mr Abdul Qaiyum's starred question No. 676 in 'Congress Responsibility' pamphlet of C. Krishna Nair, a Delhi Congress Worker.

The Honourable Sir Francis Mudie:

- (a) Yes.
- (b) He was charged under clause b of sub-rule (1) of rule 35 of the Defence of India Rules with taking part in an attack on Gheora railway station.
- (c) Yes: he was acquitted.
- (d) Government do not propose to take any action in the matter. It is open to Mr Nair to take any action to which he is entitled under the law.

Supplementaries to question No. 676 dated

The 21st November, 1944. Mr Abdul Qaiyum: Is it not a fact that the conviction of Mr Krishna Nair was used as one of the reasons for proving that the congressmen were taking part in sabotage and violent movements?

The Honourable Sir Francis Mudie: The statement that he was convicted was included in the official publication

'Congress Responsibility for Disturbance'.

Mr Abdul Qaiyum. May I know whether this publication was prepared before the gentleman in question was convicted by the trial court?

The Honourable Sir Francis Mudie: No.

Sarda Sant Singh: May I know from the Honourable Member if he is prepared to withdraw that statement from this official book after his acquittal from the High Court?

The Honourable Sir Francis Mudie: If there is a demand for another edition, it will be corrected.

Sardar Sant Singh: What responsibility does the Government of India feel in the matter? Having put in an inaccurate fact in a book published by the Government of India, is it not the responsibility of the Government to withdraw it *ipso facto*?

The Honourable Sir Francis Mudie: The statement was made before his acquittal.

Sardar Sant Singh: But if the High court found it to be incorrect, what is the responsibility of the Central Government in that respect? Are you bound by the ruling of the High Court or not?

(No answer)

Mr Abdul Qaiyum: Will the Honourable Member issue a correction slip?

(No answer)

Mr Abdul Qaiyum: Sir, I want an answer to this question. If the Income-tax Manual can be brought up-to-date, surely we are also entitled to have these corrections.

Mr President (The Honourable Sir Abdul Rahim): The Honourable Member has heard the question and the Chair cannot compel him to reply.



261: Extracts from Fortnightly Report from C.P. and Berar for this second half of November 1944

File No. 18/11/44 – Home Poll (I)

[NAI]

The Nagpur High Court set aside the order passed by the Provincial Government forfeiting the security furnished by the printer and publisher of the *Nagpur Times* for having published the grounds of detention served on certain Congress detenus. The Court held that the disclosure was not of 'confidential' information, as defined in Defence Rules 34 (2). In the connected case of contempt of court for forfeiting security and instituting criminal proceedings in the same court, the application was dismissed on the ground that though the action taken by the Provincial Government was 'regrettable' it was permissible under the law.

262: official Noting on Ram Manohar Lohia's case – (dt 16.12.1944) (extracts)

File No. 44/91/44 – Home Poll (I)

[NAI]

Secret

Intelligence Bureau, Department.

Home Deptt. may be interested in the following extract from a letter dated 28.11.44 seen in secret Censorship and released, from Sri Prakasa, 'Camp Lahore, to M.R. Masani, Bombay House, Fort, Bombay: 'I happen to be here a couple of days. I happen to meet Mr Jiwan Chandra Kapur, Bar-at-law, Begun Road, Lahore). He thinks there ought to be a *Habeas Corpus* application for Lohia also and would like to have instructions in that behalf from Kanga & Co. (Solicitors, Bombay). He would thus be able to meet him and see what can be done.

I hope you will consider the matter. You may meet me at Benares, where I hope to reach on December 8th via Hardwar and tell me what more I can do in this behalf. I fought hard for our friends at Delhi and had a talk with the Home Member also. I could not cut much ice. I am expecting some change in the political situation by January.

(B.J. Beveridge.)
Assistant Director (S).

Home Department

D.I.B. u/o No. 10/C.S./39, dated Dec. 16, 1944.

263: Caveeshar's case¹

File No. 44/52/44 – Home Poll (I)
[NAI]

25.12.44

In the High Court of Judicature at Lahore.

In re: The Habeas Corpus Petition of S. Sardul Singh Caveeshar, now detained in Dharamsala Sub Jail as Security Prisoner Class I.

Affidavit of S. Sardar Singh Caveeshar, made on 25.12.44 before Charanjit Lal Anand, Magistrate 1st Class, at Dharamsala I, Sardul Singh, solemnly affirm and state as under:

1. That the interview allowed to me with my counsel under orders of the Honourable Justice Mr Ram Lal, was in the presence and hearing of an Inspector of C.I.D., who was taking verbatim notes of every word uttered by me or my counsel.

2. That there were certain instructions with regard to my petition which I did not like to give to my counsel within the hearing of the Inspector. The inspector, however, did not agree to this, in spite of my undertaking that if so allowed I shall not talk to my counsel except with regard to the petition.

3. That under these circumstances in the interests of justice, I should be permitted to be present in the High Court at the time of the hearing of my petition to be able to instruct my counsel.

4. That at the time of the interview I desired to be given a copy of the affidavit of Mr Bourne dated 6.9.1944 filed in the High Court in my petition, but the Inspector of C.I.D. did not allow this to be done.

5. That I was arrested on 9th March, 1942, at 10 a.m. at Lahore by the Punjab Police and was informed that I was being arrested under rule 129 of the Defence of India Rules and that after enquiry if nothing was found against me I would be let off.

6. That I was ill on the day of my arrest and no question were asked from me nor were any answers given by me.

7. That the order of the Central Government is also dated 9.3.1942 which shows that this order was passed without getting any material from the Punjab Government on which the Central Government could properly act.

8. That on 24th March 1943, Punjab Government passed an order releasing me from Campbellpur Jail, and on the same date passed another order ordering my detention in Dharamsala sub jail.⁴

9. The order of release passed by the Punjab Government dated 24.3.1943 meant from that order of the Central Government dated 9.3.1942 was vacated and the same become ineffective after that date.

10. That on 4.5.1943 I asked for a copy of the order of the Central Government dated 9.3.1942 under which I was alleged to be detained. Mr Wace D.I.G., vide his letter dated 17.5.1943 referred me to the Punjab Government order dated 9.4.1943 which was an

endorsement by the I.G. Prisons to Dharamsala Jail about Punjab Government order dated 24.3.1943. This also showed that the order of the Punjab Government and not the order of the Central Government dated 9.3.1942 was treated as being in force.

11. That in spite of my requests the copies of the following orders have not been supplied to me by Government:

1. Order by the Central government dated 9.3.1942.
2. Orders by the Punjab Government dated 9.3.43, ordering my release from Campbellpur and detention in Dharamsala.
3. Order of the Punjab Government ordering my transfer from Lahore to Campbellpur.
4. Order of the Punjab Government ordering my detention in Lahore.

12. That for the proper presentation of my case the copies of the above in the affidavit of Mr Bourne dated 6.9.1944, in para 3 may be supplied to me.

Signed Sardul Singh Caveeshar,
Deponent

I solemnly declare that the above affidavit of mine is true and correct, no part of it is false and that nothing has been concealed therefrom.

Dharamsala.
25.12.1944

Signed Sardul Singh Caveeshar.
Deponent

Certified that the above was declared on affirmation before me this 25th day of December, 1944, at Sub-jail, Dharamsala in the District of Kangra by Sardul Singh Caveeshar who is a security prisoner at Dharamsala sub jail and is known to me.

Signed C.L. Anand.
Magistrate Ist Class.
25.12.44.

Certified further that this affidavit has been read and explained to Sardul Singh Caveeshar the declarant who seemed perfectly to understand the same at the time of making thereof.

Signed C.L. Anand.
Magistrate Ist Class.
25.12.44.

1 See Docs 250, 251 and 252.

2 See enclosure to Doc. 265.



264: Basanta Chandra Ghose – Appellant v. Emperor [Spens C.J. Varadchariar and Zafrullah Khan J.J. (19 January 1945)]

AIR, Vol. 32, 1945, Federal Court, p. 18
(From Patna: (45) 32 AIR, 1945, Pat. 44).

Criminal Appeal No. 12 of 1944.

S.C. Ghose, Advocate, Federal Court, with B.C. De, Advocate, Patan High Court, Instructed by Gurudayal Sahay, Agent – for appellant.

Sir Brojendra Mitter, Advocate-General of India (H.K. Bose, Advocate, Federal Court with him) instructed by K.Y. Bhandarkar Agent, Mahabir Prasad, Advocate-General of Bihar (R.J. Bahadur, Advocate, Federal Court, with him), instructed by S.P. Varma, Agent – for the Crown.

Spens C.J. – This is an appeal by a detenu against an order of the High Court at Patna dismissing his application under s. 491 Criminal P.C. The appellant was arrested on 27th March 1942, under an order dated 19th March 1942, purporting to be made by the Governor of Bihar in exercise of the powers conferred by R. 26, Defence of India Rules. The application under S. 491 was filed on 28th April 1943. For one reason or another the hearing of the application was delayed till February 1944, and in the meanwhile Ordinance 3 of 1944 was promulgated on 15th January 1944. The application was dismissed by the High Court, but on appeal, this Court held that the new Ordinance (ordinance 3 of 1944) did not take away the power of the High Court to deal with the matter and accordingly remitted the case to the High Court with a direction that the petition be restored to the file and disposed of in due course of law. The order of this Court was passed on 23rd May 1944. On 3rd July 1944 the Governor of Bihar passed two orders, Nos 3928C and 3929C. By the first, he cancelled the order of detention dated 19th March 1942, and by the second, he directed the detention of the appellant on the ground that it was necessary so to do 'With a view to preventing him from acting in a manner prejudicial to the maintenance of public order and the efficient prosecution of the war'. When the application again came on for hearing before the High Court, reliance was placed by the Advocate-General of Bihar on the order of 3rd July 1944, and he contended that it was unnecessary in the circumstances to enquire into the validity of the order of 19th March 1942. Objection was taken on behalf of the detenu to this course and the validity of the orders of 19th March 1942, and 3rd July 1944, was questioned on various grounds. These contentions were discussed at considerable length by the learned Judges of the High Court and they held that the objections were untenable, the petition was accordingly dismissed. Hence this appeal.

Two constitutional points were urged before us. The first was to the effect that Ordinance 3 of 1944 was ultra vires the Governor-General in so far as it purported to authorize detention on the ground that the detenu was likely to act in a manner prejudicial to the efficient prosecution of the war. It was contended that legislation relating to the prosecution of war was not within the ambit of any of the lists in sch. 7 to the constitution Act and that therefore

neither the Indian Legislature nor the ordinance making authority was competent to legislate in respect of that topic. It was recognised that 'preventive detention for reasons of State connected with defence' was a subject specified in entry No. 1 in list 1 but it was urged that it could not be assumed that the prosecution of the war was necessarily a matter of defence and that the war may in certain circumstances be a war of aggression or conquest. We are of the opinion that there is no force in this contention. The reference to 'the efficient prosecution of the war' in the Ordinance as well as in the order of detention must be understood in the light of the circumstances in which the Ordinance came to be passed. The language of cl. 3 of the Ordinance is only a repetition of the language of S. 2 (1), Defence of India Act, and that Act begins by referring to the proclamation of the Governor-General under S. 102, Constitution Act, to the effect that the security of India is threatened by the war. Events of which the Court is entitled to take judicial notice were happening in 1942, 1943 and 1944 with reference to which it could clearly be postulated the efficient prosecution of the war was necessary for the defence of India.

It was next contended that if the ordinance was invalid in so far as it precluded certain matters being adduced in evidence. It was said that this was in effect an attempt to repeal pro tanto certain provisions of the Evidence Act and it was not within the power of the Governor-General to exact such a provision to be in force during the time that the Ordinance itself was in force. What was contended was that he had no power to affect the provisions of the Evidence Act permanently. Clause 11 of the Ordinance does not purport to do so. Its words are general. The utmost that could be said is that if the prohibition enacted by it were sought to be enforced after the expiry of the Ordinance, a question might arise as to whether the prohibition would then remain in force. But that is no ground for holding that the clause is invalid even in so far as it prohibits certain things being done during the currency of the Ordinance. Objection was also taken to the validity of sub cl. (2) of cl. 11. It was contended on the authority in (1920) 1. K.B. 829 that such a provision could not be said to be for the peace and good government of British India and could not theretofore be held to be authorized by S. 72, Sch. 9, Constitution Act. It is unnecessary for the decision of this case to deal with this question even if it were open to the Court to examine the correctness of the decision of the Governor-General as to the requirements of any particular situation.

With the leave of the Court a number of contentions relating to other aspects of the case were argued before us.

As we are of the opinion that there is no substance in any of these contentions they may be briefly dealt with. It was broadly maintained that neither the order of 19th March 1942 nor the order on 3rd July 1944 was a bona fide exercise of the power entrusted to the Governor and that they were passed for other ulterior ends unconnected with the maintenance of public order or the efficient prosecution of the war. It was urged that as the detenu challenged the bona fides of the order and as the reason and circumstances relating thereto were wholly within the knowledge of the officers of Government it was incumbent upon the Crown to examine these officers to establish the bona fide character of the order and as they have not been examined the court must draw the inference that the order was not made in the bona fide exercise of the power. It was even contended that after the proclamation under S. 93, Constitution Act, the Crown was no longer entitled to rely on S. 59 (2) of that Act and cl. 10 (3) of Ordinance 3 of 1944 and that the order of 3rd July 1944 should therefore be formally proved. A complaint was also made that the High Court acted improperly in dismissing the application of the detenu to summon Mr Houlton, the Chief Secretary to the Government of

Bihar, who had signed the orders of 3rd July 1944. This line of argument is, in our opinion, untenable. It was no doubt open to the detenu to show that the order was not in fact made by the Governor of Bihar or that it was a fraudulent exercise of the power. The observations in (1942) A.C. 206 and (1942) A.C. 284 establish that the burden of substantiating these pleas lies on the detenu. In the words of Viscount Maugham, once the order is proved or admitted,

It must be taken *prima facie*, that is until the contrary is proved, to have been properly made and that the requisite as to the belief of the Secretary of State (here, the Governor) was complied with.

As regards proof of the orders, we find nothing in the proclamation under S. 93 to exclude the application s. 59 (2), Constitution Act or cl. 10 (30) of the Ordinance. The proclamation suspends only so much of s. 59 as requires 'consultation with the ministers'. The mere fact that the detenu challenges the factum or the bonafides of the order of the fact that the officers of Government must naturally be in possession of information on the subject cannot be said to be 'proof to the contrary' so as to make its incumbent on the Government to adduce evidence in support of the order. In 1962 A.C. 284, Goddard L.J. (as he then was) referred to the possible ignorance of the detenu as to the reasons for his internment and said that would not shift the burden of proof, because it in no way shows that the secretary of state had no reasonable cause to believe or did not believe' that it was necessary to detain the person. Reference was made to (1943) 1 K.B. 607 as to the extent of the proof required to rebut the presumption in such cases; but as no proof whatever is forthcoming in this case no question of quantum of proof arises. The detenu no doubt made some sweeping assertions in the affidavits but no materials or sources of information with reference to which these assertions were made disclosed in the affidavit. No value can therefore be attached to these assertions. Even these affidavits did not assert that the orders of 3rd July 1944 were not in fact made by the Governor. As regards the detenu's application to summon Mr Houlton, It was certainly within the discretion of the learned judges of the High Court to dismiss it, if they considered that it was only an attempt to fish for information that might be turned to some account by the detenu. To permit such a device would practically be to allow the rule as to the onus of proof to be circumvented.

It was next contended that the very fact of the cancellation of the order of 19th March 1942 by order of 3rd July 1944 and the passing of a fresh order of detention on 3rd July 1944 showed *mala fides*. It was said that the orders of 3rd July 1944 were passed pending the further hearing before the High Court, in order to burke an enquiry into the circumstances connected with the order of March 1942. We are unable to draw any such inference from the sequence of these orders. Reports of the decisions of this court and of the High Courts show that during 1943 and 1944 different views were held in different quarters as to the formalities necessary for a valid order of detention and as to the authority entitled to pass such an order. If in view of possible defects of this kind in connection with the order of 19th March 1942 a fresh order of detention was passed in July 1944, so as to avoid any argument based on such defects such course will not justify any influence of fraud or abuse of power.

It was next argued as a matter of law that once the order of 19th March 1942 had been cancelled, there was no power to pass a fresh order of detention except on fresh materials and it was contended that the learned judges of the High Court were not justified in presuming that fresh materials must have existed when the order of July 1944 was made. The first step in this argument seems to us unwarranted. The observations of the Court of Appeal in (1942) 1 ALL E.R. 873 show that in this broad form the proposition is untenable. It may be that in

cases in which it is open to the Court to examine the validity of the grounds of detention a decision that certain alleged grounds did not warrant a detention will preclude further detention on the same grounds. But where the earlier order of detention is held defective merely on formal grounds there is nothing to preclude a proper order of detention being based on the pre-existing grounds themselves, especially in cases which the sufficiency of the grounds is not examinable by the courts. There is equally no force in the contention that no order of detention can be passed against a person who is already under detention. The decision of the Patna High Court in 28 pat. 252 cannot be understood as laying down any such proposition as a general proposition of law. The learned Judges seem to have drawn an inference of fact from the circumstances of the case that the order then in question was not one made in the bona fide exercise of the Governor's powers.

It was finally contended that as the previous order of this Court directed an enquiry into the validity of the detention under the order of 19th March 1942, the decision of the High Court must be limited to that question and that it was not open to the High Court to base its decision on the subsequent order of July 1944. This contention proceeds on a misapprehension of the nature of habeas corpus proceedings. The analogy of civil proceedings in which the rights of parties have ordinarily to be ascertained as on the date of the institution of the proceeding, cannot be invoked here. If at any time before the Court directs the release of the detenu, a valid order directing his detention is produced, the Court cannot direct his release merely on the ground that at some prior stage there was no valid cause for detention. The question is not whether the later order validates the earlier detention but whether in the face of the later valid order the court can direct the release of the petitioner. The appeal fails and is dismissed.

Appeal dismissed.

265: Caveeshar's case

File No. 44/52/44 – Home Poll (I)
[NAI]

In the High Court of Judicature at Lahore.

Cr. M. No. 491 of 1944.

30.1.45

Petitioner: By Messrs J.L. Kapur, Harbans Singh, etc.

Respondent: By Mr B.K. Khanna Advocate-General assisted by Mr Roy, Solicitor.

ORDER. This is an application under section 491 of the code of Criminal procedure for an order in the nature of a writ of habeas corpus. The petitioner Sardar Sardul Singh Caveeshar was originally ordered to be detained by an order of the Central Government under rule 26 of the Defence of India Rules and is now being detained by reason of an order under the proviso to section 9 of the Restriction and Detention Ordinance No. III of 1944. The learned Acting Advocate-General takes a preliminary objection to this application on the ground that

the previous application of the petitioner having been dismissed by a Division Bench, and an appeal against that dismissal having been rejected by the Federal Court, the present application is not competent inasmuch as it amounts to an application for review of the order of the Division Bench. In support of this contention he has cited an unreported case, Criminal Miscellaneous No. 338 of 1942 and A.I.R. 1944 Lah. 373. These decisions lay down that where an application under section 491 of the Criminal Procedure Code has been dismissed, a fresh application on the same facts does not lie. Here the ground of the application is that no order under rule 26 of the Defence of India Rules was made by the Central Government on 9th March 1942, and that the petitioner having been released from the Campbellpur Jail on the 24th March, 1942, the original order of his detention came to an end and could not, therefore, be extended under the proviso to section 9 of the Ordinance. Since these allegations are new and were not taken in the previous application, I consider that the application lies and must be decided on the merits. The relevant facts on which the decision of these two points rests are that the petitioner was arrested at Lahore by the Punjab Police under rule 129 of the Defence of India Rules on 9th March 1942. Subsequently an order dated the 9th March 1942, purporting to have been made by the central Government was received by the Punjab Government and thus the original detention which was under rule 129 was converted to one under rule 26 of the Defence of India Rules. Under the orders of the Central Government the power to define the place where the detenu was to be detained was left to the Punjab Government and in exercise of these powers that Government determined sub-jail Campbellpur to be the place of petitioner's detention. On 24th March 1942 the petitioner was transferred from the Campbellpur sub-jail to the sub-jail at Dharamsala and in order to give effect to his transfer two orders were made by the Punjab Government. These are as follows:

'No. 5934 BDSB. - Order No. 14164 BDSB issued by the Punjab Government on the 8th October, 1942, directing the detention of Sardul Singh Caveeshar, son of Kirpal Singh in the District Jail, Campbellpur, under rule 26 of the Defence of India Rules, 1939, is hereby cancelled

By order of the Governor of the Punjab

Dated Lahore, the 24th March 1943

Signed F.C. Bourne
Chief Secretary to Government, Punjab

To
The Superintendent,
Sub-Jail, Dharamsala.

No. 5933 BDSB - Whereas the Governor of the Punjab, for good and sufficient reasons, being reasons connected with the maintenance of public order has seen fit to determine that Sardul Singh Caveeshar son of Kirpal Singh shall be detained.

Now, therefore, in exercise of the powers conferred upon him by sub-rule (1) of rule 26 of the Defence of India Rules, as amended by the Government of India Notification No. 356 - O.R./40, dated the 28th of March 1940, the Governor of the Punjab is pleased to direct you to receive the aforesaid Sardul Singh Caveeshar into your custody.

And furthermore the Governor of the Punjab in exercise of the powers conferred upon him by sub-rule (5) of Rule 26 of the Defence of India Rules, is pleased to direct that so long as the aforesaid Sardul Singh Caveeshar is detained in your custody the conditions of his detention shall be those laid down in the Punjab Security Prisoners' Rules, 1942. He shall be treated as class I security prisoner.

And furthermore, the Governor of the Punjab, in exercise of the powers conferred by Rule 27 of the Defence of India Rules, is pleased to direct that the aforesaid Sardul Singh Caveeshar shall, when required to do so by you or such other officer as may have been appointed to receive him into his custody —

- (a) allow himself to be photographed;
- (b) allow his finger and thumb impressions to be taken;
- (c) furnish specimen of his handwriting and signature.

Given at Lahore, this 24th day of March 1943.

By order of the Governor of the Punjab,
F.C. Bourne,
Chief Secretary to Government, Punjab

Judgement — It is quite clear from these two orders that what the Punjab Government intended to do was to transfer the petitioner from Campbellpur to Dharamsala. They did so by cancelling the previous order of his detention at Campbellpur and by making a fresh order for his detention at the sub-jail, Dharamsala. In his affidavit the petitioner states in para No. 3, 'That on 24th March 1943, Punjab Government passed an order releasing me from Campbellpur Jail, and on the same date passed another order ordering my detention in Dharamsala sub jail'. This allegation does not in any way amount to a contradiction of the facts which are evidenced by the two orders and the question, therefore is one of interpretation of these two orders. After considering the matter I have no doubt that what was intended by the Punjab Government was merely to transfer the petitioner from one place to another. If on this part of the case any allegation had been made by the petitioner inconsistent with the two orders produced or any statement had been made from the bar that either counsel representing the petitioner had information from the petitioner that the facts were not as stated in these two orders, perhaps I would have ordered the production of the petitioner to make his statement. But in the absence of any such allegation I do not see any reason to require the petitioner to be brought here.

Even if the second order made by the Punjab Government on 24th March may be held to be a fresh and independent order directing the petitioner's detention as distinguished from an order prescribing a place for his detention, the legal position is not at all affected. The Central Government and the Provincial Government has concurrent jurisdiction and the mere fact that an order of the Central Govt. is followed by a similar order by the provincial Government does not have the effect of making the Central Government's order inoperative and thus incapable of extension under the provision to section 9 without a similar order of extension by the Provincial Government.

As regards the second point the position appears to be as is stated in the affidavit of Mr Bourne, that the petitioner was arrested on receipt of telegraphic instructions from the Government of India. As at that time the Punjab Government had not received any order under rule 26 from the Central Government and there was no offence under investigation the only course that the Punjab Government could adopt was to have the petitioner arrested under rule 129. Subsequently an order under rule 26 from the Central Government was received and here is no allegation before me in the affidavit that the order of detention dated the 9th March 1942, was not made by the Central Government on that date. I, therefore hold that

no case for an order under section 491 of the Code of Criminal Procedures has been made out and dismiss this petition.

Let a copy of this order be sent free of charge to the petitioner.

30th January 1945

Signed M. Munir
Judge.

266: Bajirao Yamanappa Hatgar and others Applicants v. Emperor [Chagla' and Gajendragadkar' J.J. (10 April 1945)]

AIR, Vol. 33, 1946, Bombay, p. 32

Criminal Applications Nos 426, 427 and 428 of 1944, Decided on 10th April 1945.

R.A. Jahagirdar and D.M. Ahavale for Applicants.

C.K. Daphtary (Advocate-General) and S.G. Patvardhan (Asst. Govt. Pleader).

Chagla J. — This is an application under S. 491, Criminal P.C. it seems that on 22nd May 1942, one S.V. Ghatnatti, Sub-Inspector of Police, was murdered at Kerur. In connexion with that offence the applicant was arrested on 27th August 1942 and he along with others tried by the Sub-Divisional Magistrate, First Class, Southern Division Bijapur, under Ss. 147 and 186 read with S. 149 Penal Code. The applicant was released on bail by the Court on 7th October 1942. The trial of the case went on 9th 10th, 14th, 15th, and 16th October 1942, and on 11th May 1943. On all these days the applicant appeared at the trial. Thereafter he absconded. On 24th May 1943 the District Magistrate, Bijapur issued an order under R. 2b Defence of India Rules for the detention of the applicant in the Belgaum Central Prison for one year from the date of arrest. On 4th January 1944, a proclamation under S. 87 Criminal P.C., was issued for the arrest of the applicant, and he ultimately surrendered to the District Superintendent of Police, Bijapur on 8th April 1944. In the meanwhile the case against the other accused was disposed of on 14th September 1943, and all of them were acquitted. On 6th June 1944 the District Magistrate Bijapur sanctioned the withdrawal of the case against the applicant and an order for his acquittal was made by the Resident Magistrate First Class Bijapur on 24th June 1944. On 23rd May 1944, the Government of Bombay issued an order cl.(b) of sub s. (1) of S. 3 of Ordinance 3 of 1944. The Government under S. 9 of the Ordinance directed that the order of 23rd May 1944 should continue in force.

The applicant has been in detention since 8th April 1944 and his contention is that his detention is illegal and he should be set at liberty. The applicant is at present detained under an order of the Government of Bombay dated 6th November 1944 and we have to consider whether that order is valid and whether the detention of the applicant under that order is legal. Section 10 of Ordinance 3 of 1944 provides that no order made under the Ordinance shall be called in question in any Court, and no Court shall have power to make any order under s. 491, Criminal P.C., in respect of any order made under or having effect under the Ordinance or in respect of any person the subject of such an order. But it is clear that the

jurisdiction of the Court is only taken away provided the order on which the Government is relying is an order 'made under the Ordinance'. It must be made by the detaining authority in the proper exercise of its powers. It would not be an order 'made under the Ordinance', if it was made merely in the colourable exercise of its power or if the detaining authority exceeded the powers given to it under the Ordinance. The detaining authority must satisfy the Court that it has complied with all the rules of procedure laid down in the Ordinance and has observed all the safeguards. The order must not be made for an ulterior purpose — a purpose which has no connexion with the security of the State or the efficient prosecution of the war. The order must not be intended to override the ordinary powers of the police for the investigation of a crime or to suspend the ordinary criminal tribunals of the land or prevent them from exercising their ordinary jurisdiction. The powers conferred on the executive under the Ordinance are for the purpose of preventive detention and they are not punitive in their nature. The executive must not detain a subject in order to punish him for what he has already done but in order to prevent him from doing something which in the opinion of the executive is likely to affect the safety of the State or the efficient prosecution of the war. It is not competent to the Court to inquire into the sufficiency of the materials and the reasonableness of the grounds on which the detaining authority was satisfied that it was necessary to make the order. But if any reasons which influenced the detaining authority in making the order appear on the record, the Court can scrutinize them in order to see what was the condition of the mind of the detaining authority when it made the order. These principles which I have stated clearly emerge from the various decisions of the Federal Court and the High Courts in India which have been cited at the Bar. In A.I.R. 1944 F.C. 86 Sir Patrick Spens, C.J. delivering the judgment of the Federal Court, observed (p. 93).

In our judgment no further curtailment of the power of the Court to investigate and interfere with orders for detention has been imposed by Ordinance 3 of 1944. The Court is and will be still at liberty to investigate whether an order purporting to have been made under R. 26 and now deemed to be made under Ordinance 3 or a new order purporting to be made under Ordinance 3 was in fact validly made, in exactly the same way as immediately before the promulgation of the Ordinance. If on consideration the Court comes to the conclusion that it was not validly made on any of the grounds indicated in any of the long line of decisions in England and this country on the subject other than the ground that R.26 was ultra vires, S.10 of Ordinance 3 will no more prevent it from so finding than S. 16 Defence of India Act did. Such an invalid order though purporting to be an order, will not in fact be an order made under this Ordinance or having effect by virtue of S. 6 as if made under this Ordinance at all for the purposes of section 10.

And Harries C.J., in A.I.R. 1944 Lah. 378 in the course of his judgment said (p. 375):

In my judgement R. 129 cannot be used legally for any purpose other than that for what it was intended namely to ensure inter alia the security of the State and the efficient prosecution of the war.

To use it for some entirely different purpose wholly unconnected with the security of the State or the efficient prosecution of the war is in my view a misuse of the powers given by that rule and an order passed for such purposes cannot be said to be an order under R. 129, Defence of India Rules.

Further on the learned Chief Justice observed.

It would in my view be extremely dangerous to hold that the police or the Provincial Government had any right to detain persons under R. 129 unless the order was made with the object of making it impossible for the person detained to interfere with matters connected with the defence of India or the efficient prosecution of the war.

With respect I entirely agree with these observations of the learned Chief Justice and in our opinion these observation apply as much to an order made under Ordinance 3 of 1944 as to an order made under R. 129, Defence of India Rules. In this case the order made by the Government of Bombay is valid on the face of it. The original order was made on 23rd May 1944 and it purports to order the detention of the applicant because the Government of Bombay was satisfied that it was necessary to do so with a view to preventing the applicant from acting in a manner prejudicial to the public safety and the maintenance of public order and the order of 6th November 1944, directs that the original order shall continue in force which direction was given by the Government of Bombay after a further consideration of all the circumstances of the case. It is therefore, for the applicant to satisfy us that it was not validly made on any of the grounds which I have indicated above.

[*Omitted: Reference to Emperor v. Shibnath Banerjee and discussion on 'Governor's satisfaction' — Ed.*]

It is further contended by the applicant that he is detained not for any purpose connected with the security of the State or the efficient prosecution of the war but in order to punish him for the alleged offence in connection with the murder of S.V. Ghatnath. It is urged that because the prosecution in that case did not have sufficient evidence to warrant his conviction the Government availed themselves of the powers under the Defence of India Rules and under Ordinance 3 of 1944, and detained the applicant in custody having failed to secure his conviction by due process of law. It is pointed out that the District Magistrate made the order on 24th May 1943 only after the accused had absconded on 12th May 1943, that if Government had any materials to suspect the applicant of any activities prejudicial to the safety of the State or the efficient prosecution of the war an order under R. 26 Defence of India Rules would have been made long prior to 24th May 1943 and that the order of 24th May 1943 was made in order to detain the applicant in connection with his alleged connection with the murder of S.V. Ghatnath. It has to be remembered that the order of 24th May 1943 was made 12 days after the accused had absconded and the District Magistrate in his affidavit swears that he was satisfied from reports and information received by him from responsible sources that with a view to preventing the applicant from acting in a manner prejudicial to the defence of British India the public safety, the maintenance of public order and the efficient prosecution of the war it was necessary to make the order. It is not open to the Court to go behind this statement of the learned District Magistrate. Whether he had sufficient materials or whether the grounds on which he acted were reasonable is not for the Court to inquire into and therefore in our opinion it is not open to the applicant challenge the order made on 24th May 1943. With regard to the order of 23rd May 1944 Mr Drewe in his affidavit says that 'there is a note written on 21st May 1944 by His Excellency the Governor's Secretary Mr Symington that His Excellency agreed to the detention of the applicant' We have seen this minute and what the minute says is this.

His Excellency agrees to the detention as proposed pending consideration use of the Criminal Tribes Act

This minute clearly shows that the Governor was considering the use of the Criminal Tribes Act against the applicant and pending his decision on that question he agreed to the detention of the applicant under Ordinance 3 of 1944. Now the considerations which must weigh with the Governor in deciding whether he should use the Criminal Tribes Act against the applicant

or not are quite foreign to those which must weigh with him in deciding whether he should detain the applicant under s. 3 of Ordinance 3 of 1944. The scope and ambit of the Criminal Tribes Act have no bearing upon the purpose for which the extraordinary powers vested in the executive have to be exercised under s.3 of the Ordinance. In our opinion this minute of Mr Symington throws a flood of light on the condition of mind of detaining authority when it made the order. Its mind was directed not on what it should have been directed to, namely, the question of the security of the state or the efficient prosecution of the war, but it was directed to the more parochial and limited question as to whether the Criminal Tribes Act should be used or not against the applicant.

It is unnecessary to emphasize that when wide powers are given to the executive to deprive His Majesty's subjects of their liberty without the intervention of the Courts of law, the detaining authority must consider each case with that care and caution which the exercise of so tremendous a power should call for. The liberty of the subject is not to be lightly taken away. The satisfaction which the law requires on the part of the detaining authority before a subject can be detained is a reasonable satisfaction — a satisfaction not vitiated by any consideration which is foreign to the scope and object of Ordinance 3 of 1944. In this case, in our opinion, it is foreign to the scope and object of ordinance 3 of 1944. In this case, in our opinion, it is impossible to hold that the Government of Bombay was reasonably satisfied that it was necessary to detain the applicant with a view to prevent him from acting in a manner prejudicial to the public safety and the maintenance of public order.

It is contended by the learned Advocate-General that even though the order of 23rd May 1944 be bad the applicant is detained not under that order but the order of 6th November 1944, and that order on the face of it states that it was made after a further consideration of all the circumstances of the case, and the affidavit of Mr Drew further bears out the fact that His Excellency the Governor considered the case of the applicant before his detention was continued under that order. I take it that all the material were before His Excellency the Governor when he made the order on 23rd May 1944. After that date, the applicant continued to be in detention and was never free even for a single hour. Therefore he could not have done anything between 23rd May 1944, and 6th November 1944, to cause the Government of Bombay to be satisfied that his detention was necessary. The learned Advocate-General says that further materials about his activities prior to his detention might have been placed before the Government of Bombay. We refuse to speculate and certainly not to the prejudice of the subject. It was open to the Government once the original order of 23rd May 1944 was successfully challenged to place further materials before the Court, but it has not chosen to do so.

But it is unnecessary to consider this argument further because in our view when the order of 23rd May 1944 is invalid, the order of 6th November 1944 must also as a necessary consequence, be equally invalid, because all that the order of 6th November 1944 does is to direct that the original order of 23rd May 1944 shall continue in force, and if the original order is bad, the subsequent order directing it to continue cannot validate it. The position might perhaps have been different if the Government of Bombay had a fresh order under s.3 of the Ordinance but that they have not done. In our opinion, therefore, the order of 23rd May 1944, and the order of 6th November 1944, extending the former order are invalid, and the detention of the applicant under these orders is illegal.

We, therefore, direct that the applicant should be immediately set at liberty. In Applications Nos 427 and 428 of 1944, which are also application under s. 491, Criminal P.C., our decision

is the same on the same grounds, and we direct that the applicants in both those applications be also set at liberty immediately.

Order accordingly.

R.K.

267: Laxman Prasad Sharma – Applicant v. U.P. Government and another – Opposite Party [Madeley and Misra J.J. (7 May 1945)]

AIR, Vol. 33, 1946, Oudh, p. 183

Criminal Misc. Appln. No. 138 of 1944, Decided on 7th May 1945.

Order – This is an application under S. 491, Criminal P.C., praying that the petitioner Laxman Prasad Sharma, a detenu in Fyzabad District Jail, be ordered to be released from Jail custody. The applicant is a resident of Sikandrabad, District Bulandshahar. In 1941, Sharma was prosecuted at Bombay for the offence of procuring a forged passport, but for some reason the prosecution was dropped on 21st January 1942. Meanwhile on 3rd January 1942, an order under R. 10, sub-rule (1), cls. (d) and (e), Defence of India Rules, framed under S.2, Defence of India Act, was passed against him by the Government of India. Sharma was required by that order to proceed immediately to Sikandarabad, to report himself on arrival there to the Superintendent of Police, Bulandshahar, and thereafter to report himself at weekly intervals at Sikandarabad police station. We need not concern ourselves with what the applicant did after the service on him of the aforesaid order. It is sufficient to mention that he was eventually arrested by the Police at Raksaul in the Province of Bihar under R. 129, Defence of India Rules, on 11th February 1942. The relevant portion of R. 129 provides:

(2) '(1) Any police officer or any other officer of Government empowered in this behalf by general or special order of the Central Government (or of the Provincial Government) may arrest without warrant any person whom he reasonably suspects of having acted, of acting or of being about to act (a) with intent to assist any State at war with His Majesty, or in a manner prejudicial to the public safety or to the efficient prosecution of war'.

(3) The arrest was apparently in consequence of some activity which brought him within the scope of the above clause. It seems that soon after the authorities in the province got the news of Sharma's arrest they ultimately succeeded in bringing him to Bulandshahar. There he was convicted under R. 26 (6), Defence of India Rules, after a regular trial and sentenced to undergo rigorous imprisonment for two years and to pay a fine of Rs 500. The conviction was upheld by the Sessions Judge of Bulandshahar and later on by the High Court of Allahabad though the sentence of fine was eventually remitted.

(4) The period of imprisonment would in normal course have expired on 2nd June 1944. The applicant however says that he was due to be released from Fyzabad Jail where he was then confined on 27th January 1944 because he had earned some remission for good conduct. Whether this was so or not is little consequence in view of the fact that on 14th January 1944,

an order (No. 259 C.X.) was passed by the Government of this province under R. 26 (1) (b), Defence of India Rules, saying that the Government was satisfied regarding the necessity to detain Sharma in order to prevent his acting in a manner prejudicial to the prosecution of the war, to the defence of British India, or to the public order and directing that the applicant be detained in custody of the Superintendent, District Jail, Fyzabad, until further orders. It will be remembered that on account of some legal defect in the form in which R. 26 stood and which, the Federal Court held rendered it ultra vires, a new ordinance known as Restriction and Detention Ordinance (Ordinance No. 3 (III) of 1944) was brought into force from 15th January 1944. By virtue of S.6 cl. (2) thereof orders under R. 26 were deemed to have been made under S.3 of the new Ordinance and were to be given effect as such. Section 3 empowered the Central Government or the Provincial Government to pass an order directing among other things that a person may be detained, if the Government concerned was satisfied that it was necessary to do so with a view to prevent him from acting in a manner prejudicial to the defence of British India, the public safety, the maintenance of public order, His Majesty's relations with foreign powers or Indian States, the maintenance of peaceful conditions in tribal areas or the efficient prosecution of the war. Section 7 rendered it obligatory on the authority which passed the order to communicate to the person affected thereby as soon as possible the grounds on which the order was made against him so far as this could be done without making disclosures which may be inconsistent with public interest. The object was to enable the detenu to make representation to the authorities who were invested with the power to review the order. By force of S.9 of the Ordinance an order made or deemed under the provisions of S.6 to have been made under S.3 was operative for a period of six months only, and if it was desired to continue the detention for further period of six months an order in that behalf could be passed after a further consideration of all the circumstance of the case.

(5) It appears that during the first period of his detention the applicant was not served with any notice as contemplated by S.7. He nevertheless made a representation to the Government of 31st January 1944. Evidently it failed to achieve its purpose, for His Excellency the Governor after a further consideration of all the circumstances of the case directed continuation of detention under S.3 (1) (b) on 14th July 1944. The applicant alleges that ever since his detention began he made several attempts to approach this Court by applications under S.491, Criminal P.C. The only petition, however, which reached this Court and with which we are now concerned is the one dated 24th November 1944. On behalf of the opposite party true copies of the orders, dated 14th January 1944 and 14th July 1944 duly authenticated by the Home Secretary have been produced in evidence. The first of these orders purports to have been made by the Provincial Government and the second by His Excellency the Governor. Both of them were signed by the Home Secretary and purport to have been passed after the authority concerned was satisfied in respect of the relevant matters. In view of S. 16 (2) of the Government of India Act and S.10 (3) of Ordinance 3 (III) of 1944 it must be presumed that the orders were in fact passed by the appropriate authority. The only ground upon which it is in our opinion permissible to attack the aforesaid order is that they constitute a fraud upon the statute, in other words that though they say that the authority mentioned therein was satisfied, it did not in fact entertain the belief that it is said to have entertained. The burden of substantiating the plea as to the fraudulent nature of the orders rests of the applicant. We recognise that it is a burden difficult to discharge. The difficulty, however, cannot be availed of for relation of the ordinary rules of proof.

(b) In times of grave emergency and national danger it is natural and eminently expedient

in the defence of the country that wide powers of executive discretion should be invested in some authority which can be trusted to use them as and when circumstances imperatively demand their use. The interests of public liberty have perforce to be subordinated to the paramount consideration of public safety. The necessity of curtailing the fundamental rights of the subject is left to the judgment of some person or authority, who by his or its position has the information, which is often confidential and who can determine with due regard to the rights of the subject whether an action in a particular case is called for. In this country the satisfaction of such authority has been made by the statute the sole safeguard against an unmerited or wanton infringement of the freedom of the people. The good faith of the authority being thus presumed, if a person comes to Court on the allegation that his detention under Rule 26, Defence of India Rules, or under S.3 of Ordinance 3 (III) of 1944 is illegal or improper, it lies on him to establish that what purports *ex facie* to be an order under the aforesaid provisions was in fact not in accordance with them. On the principles enunciated in 1942 A.C. 206 and 1942 A.C. 284 it is clear that a Court of law empowered to exercise jurisdiction under section 491, Criminal P.C., cannot sit in judgment as a Court of appeal for scrutinizing the correctness or otherwise of the exercise of discretion by the Provincial Government or the Governor. Since the Government of India Act and the Ordinance obviously intend that the reasons or informations which have impelled the authority concerned to take action should not be subjected to a public judicial investigation, we cannot persuade ourselves to examine the sufficiency or the validity of the authenticity of the information.

(7) We have therefore to confine ourselves as we have said above to the question whether the applicant has succeeded in proving any fraud on the part of the authorities who passed the orders. His case, as presented to us at the bar is that the Government of India became jealous of the privileges which the applicant, as a joint managing director of a company, acquired from the Government of Nepal by a lease in 1934. It is said that expression was given by Dr Cyril Fox, Director of Geological Survey of India, to the desire of the Central Government for a sub-lease and on the proposal being turned down a threat was extended to Sharma that dire consequence would follow. The prosecution in Bombay, the subsequent order of restraint, arrest, imprisonment and detention and the later attitude of the Provincial Government and the Jail Superintendent are all, it is urged, the result of jealousy on the part of the Government of India and of the hostility conceived by Dr Fox. The evidence produced by the applicant to prove these serious and on the face of them somewhat fantastic, assertions has only succeeded in showing (a) that there existed in Bombay a Company known as the National Mining and Trading Company, Ltd., and that Sharma was one of its joint Managing Directors, (b) that a mining lease was obtained by the Company from Nepal Government in 1934, (c) that in 1940-1941 the Company on the request of Dr Fox sent certain mineral specimen for his examination and (d) that an officer of the Government of India was intending to proceed to Nepal for inspection of some mines.

(8) We are unable to find in the documents produced on behalf of the detenu (and they, we may mention, include a number of letters written by the Director of Geological Survey of India) any reference to a projected sub-lease or to a threat. The correspondence between Sharma and Dr Fox is couched in ordinary courteous language and ends with an expression of regret that it had not been possible for him to examine the mineral specimens submitted by the applicant till then. In order to come to a conclusion in favour of the alleged hostility we are asked to accept as proof the facts narrated and the suspicions expressed in two affidavits sworn by the applicant and filed in this Court by his counsel. It is urged that in the absence

of any counter affidavit from the opposite party they must be regarded as true representation of the circumstances which were responsible for the attitude of the Provincial authorities. In our opinion it was not incumbent on the opposite party to controvert the correctness of events or to dispel the suspicions to which the detenu swore. It was, we think, no part of the duty of the Government Advocate to proceed to disprove that which had not been satisfactorily established. Sweeping affidavits of the kind before us do not inspire confidence. When in addition they proceed from an interested person and remain otherwise uncorroborated, they cannot be given any evidential value. In order to bring home the charge of fraud the learned counsel for Sharma had further invited our attention to the communication sent to his client on 23rd December 1944 by the Home Secretary in pursuance of S.7 of the Ordinance. That section provides as follows:

(9) Where an order is made in respect of any person under clause (b) of sub-section (1) of 3.3, as soon as may be after the order is made and when before the commencement of this Ordinance an order has been made in respect of any person under cl.(b) of sub-rule (1) of R.26 of the Defence of India Rules, as soon as may be after the commencement of this Ordinance, the authority making or which made the order shall communicate to the person affected thereby so far as such communication can be made without disclosing facts which the said authority considers it would be against public interest to disclose, the grounds on which the order has been made against him and such other particulars as are in the opinion of such authority sufficient to enable him to make if he wishes a representation against the order and such person may at any time thereafter make a representation in writing to such authority against the order and it shall be duty of such authority to inform such person of his right of making such representation and to afford him the earliest practical opportunity of doing so'.

(10) The communication to which reference has been made by the learned counsel for the detenu is as follows:

(11) In pursuance of S.7 of the Restriction and detention Ordinance 1944 (No. III of 1944), you, Laxman Prasad Sharma, son of Ghasi Ram, resident of Sikandarabad, District Bulandshahar, are informed that the grounds for your detention were that you were actively supporting and helping the underground organization of the mass movement sanctioned by Congress in the resolution of 8th August 1942 which was calculated to impede the successful prosecution of the war.

(2) You are informed that you have right to make a representation writing against the order under which you are detained. If you wish to make such a representation, you should address it to the undersigned and forward it through the Superintendent of the Jail as soon as possible.

(Signed) C.M. Kcr.
Home Secretary to Government,
United Provinces.

(12) The argument which is based upon this communication is that since the applicant has been constantly in custody after his arrest at Raksaul in February 1942 he could not have supported or helped the underground organization which was sanctioned by the Congress about six months later in August 1942, and as this constituted the sole ground for detention, it must be regarded as an afterthought designed merely to camouflage the real intention

underlying the orders. The argument at first sight looks somewhat plausible, but having regard to the fact that the underground mass movement, though sanctioned by the Congress on 8th August 1942, had existed long before that date, it is conceivable that during the period of his imprisonment or before it the applicant actively supported or helped it. It is not necessary for us to look for the evidence to prove that he did so. It is sufficient that the provincial Government and His Excellency the Governor were satisfied that he did. Finally it is contended that the delay in communicating the grounds of detention to the detenu and the attitude of the jail Superintendent in refusing legal assistance and withholding his previous habeas corpus applications exhibit a malice which must have been inspired from interested sources namely the Government of India or Dr Fox. There is no evidence whatsoever in support of this contention and the suggestion appears to us to be ridiculous.

(13) There are some matters, however, which have come to our notice in this case and which call for serious comment. We have mentioned above that the first order of detention was passed on 14th January 1944, and that it expired on 14th July 1944. We have also stated that S.7 of the Ordinance imperatively enjoins that the detenu must be supplied with the grounds of detention as soon as possible. We observe in this case that the provisions of S.7 were altogether ignored throughout the period of the first detention. During the second period which commenced on 14th July 1944, the requisite notice was not issued by the official concerned till over five months had elapsed, and the detenu had succeeded in getting his present application forwarded to this Court. It is difficult to believe that till 23rd December 1944 it was against public interest to inform Sharma of the charge. In our opinion the inordinate delay in sending the notice, displays either negligence or indifference. The ordinance prescribes no method by which the detenu can enforce the privilege which the statute confers on him with the avowed object of enabling him to obtain redress in the only way possible. Greater vigilance is therefore necessary and in appropriate circumstances we conceive that an omission to give effect to the intention of the statute may necessitate a finding that the detention though not illegal in its origin had become improper within the meaning of S. 491, Criminal P.C. Fortunately in this case no real prejudice has resulted by the inordinate delay. We say this, because the applicant did in fact make a representation on 31st January 1944 disclosing his whole case, and His Excellency the Governor after a further consideration directed the detention to continue. There is also the further fact that Sharma when served with the ground of his detention did not choose to represent his case again. The obvious conclusion is that he did not feel any necessity for it.

(14) We also consider it necessary to express our disapproval of the conduct of the jail authorities in denying to the detenu all facility for obtaining legal assistance in order to move this Court by a habeas corpus application and in withholding his petition under S. 491, Criminal P.C., which was handed over to the Superintendent, District Jail, Fyzabad, on 17th February 1944. We have no hesitation in saying that the allegations of the applicant in this behalf are substantially correct. It appears that on 3rd February 1944, Sharma addressed a letter to Mr R.F. Bahadurji, a senior Advocate of this Court, requesting him to move the Chief Court for this release. In this letter he enclosed a cheque for 20 for meeting the necessary expenses. The letter and the cheque were handed over to the Superintendent but were returned to the detenu. The latter then himself drafted a petition in the nature of habeas corpus and gave it to the Superintendent for transmission to this Court along with the same letter and the cheque. We have an affidavit sworn by the Superintendent which states that the letter and the cheque were forwarded by him to the Inspector General of Prisons on 2nd April 1944. The delay in

taking action is noticeable but what is more significant is that he does not deny the applicant's allegation regarding the handing over of the petition to him nor does he explain why it was not forwarded to this Court in the ordinary course. It appears that the detenu twice complained to the Deputy Commissioner Fyzabad, regarding the attitude of the Jail Superintendent, once in the beginning of August and again in September 1944. He handed over to these officers copies of the petition of 17th February 1944 as well as a reminder dated 31st July 1944 which he had addressed to this Court. The Deputy Commissioner wrote the Government Advocate in August 1944 enquiring about the fate of Sharma's application. The papers which Sharma delivered to the Deputy Commissioner in August are also now on the file. We further know that sometime in September or October the Deputy Commissioner communicated with the Home Secretary regarding the complaint and he was directed to inform the detenu that his application must be submitted to this Court in the manner prescribed therefore (vide Home Secretary's letter No. 6208/C.X., dated 12th October 1944 a copy of which is on the record).

(15) It was after this information was conveyed to Sharma that his application dated 24th November 1944 was eventually forwarded. Strong exception has been taken in other provinces to a similar conduct on the part of Jail authorities. Fortunately in this province this is the first case in which an irregularity of this kind has come to our notice. It has been observed in A.I.R. 1911 Lah. 142 and it will bear repetition that petitions under S.491, Cr. P.C. must be forwarded to the Court with utmost expedition. They demand urgency and laxity in these matters cannot be countenanced. It may be that the officer concerned was under the impression that an application under S.491, Cr. P.C., did not lie in view of section 10 (1) of the Ordinance but this is no ground for withholding it. It must be pointed out that the power to decide whether a petition addressed to this Court is or is not competent vests in this Court alone. We hope that our calling attention to this kind of behaviour on the part of those concerned will suffice and that in future scrupulous care will be exercised by those in charge of forwarding such applications from persons entrusted to their custody.

(16) Before we close this judgment we think we ought to make a reference to another application received from the detention 6th April 1945, complaining that the Jail authorities had transferred him to Central Prison, Agra, on 19th March 1945, and had thus removed him from the jurisdiction of this Court. It was prayed that the Inspector General of Prisons be ordered to transfer the petitioner to Lucknow Jail and that certain facilities for legal advice and filing of documents be granted to him. We are informed that the transfer was made under some mistake and that the applicant has since been brought back to Lucknow. His counsel have in due course filed the documents on which reliance was placed and gave him full assistance. It is, therefore, not necessary to pass any orders on this application. As we are of opinion that the orders of detention of Laxman Prasad were not passed fraudulently, we dismiss his application under S.491, Cr. P.C. The petitioner's learned counsel has asked us to certify under S. 205 of the Government of India Act, that the case involves a substantial question of law as to the interpretation of that Act and is fit one for appeal to the Federal Court. No such question has been argued or is in our opinion involved. The certificate is accordingly refused.

Application dismissed.

D.S/D.H.

IV

Gandhi's Charisma

It was the three-week fast by Mahatma Gandhi from the middle of February that brought home to the British Government the enormous hold this seventy-three year old man still had over politically conscious persons in India. The European element in the administration reacted unsympathetically, some of them taking a calculated risk about letting him die in custody. Nevertheless, the resignation of three Indian members from the Viceroy's Council (Doc. Nos 15 & 16), and the conference of fifty five prominent public figures in Delhi on 20 February (Doc. No. 20) indicated that the Raj was far from winning the battle for the loyalty of the Indian masses. As the Quaker journalist Horace Alexander¹ observed in a pamphlet published in 1944, after having spent fourteen months in India in 1942-43 with the Friends Ambulance Unit, 'People who came to Poona angry and pessimistic after visiting Mr Gandhi's bedside went away cheerful, hopeful, courageous' (Doc. No. 39). We have already noted, in the context of discussing Censorship of the press, how the Government found the press coverage of the fast profoundly disturbing,¹ and it was anxious to provide no excuse for any belief that the Raj respected him as a person. Docs 40, 42, 45 indicate how the Bengal government prohibited any official statement of condolence should he die while in custody. However, the same documents show that it was reluctant to ban mourning by other people, provided law and order was not affected.

The dog that did not bark in the night-time when a thief came provided a useful clue to a famous detective in fiction. By the same criteria, if we look into the types of people who did not express any concern during Gandhi's fast we can identify the apologists of the Raj. Many individual Muslim public figures voiced their concern (Docs 10, 12, 13) but there was no expression of anxiety from the Muslim League. In Bengal the C.P.I. mobilized its Muslim supporters to show their distress. (Doc. No. 34 Chapter XVIII) Attitude of M.N. Roy and the R.D.P. was indifferent (Doc. No. 23).

However, by May 1944 the Raj had realized that it was more likely to retain some of its dwindling prestige if it released Gandhi unconditionally, an act which was universally welcomed. (Doc. No. 43).

¹ See above, main introduction

Other Documents Relevant for this Chapter

1. Doc. 21 in Chapter I-B.
2. Doc. 56 in Chapter I-B.
3. Doc. 25 in Chapter II.
4. Doc. 3 in Chapter VI.



1: Gandhi starts three week fast — News item in *Daily Worker* (dt 6.2.1943)

Daily Worker (London)

[NAI – MF Acc. No. 2430]

Gandhi who is 73 years old, began a 21 days fast at dawn at the Aga Khan's palace yesterday morning in Poona, he is under detention.

He has announced that he will continue for three weeks on a diet of fruit juice and water.

Gandhi's fast is a sequel to a long correspondence with the Viceroy, in which he repudiates the suggestion that Congress is responsible for the murders, train-wrecking and damage to property which has taken place.

The correspondence was published by the Government of India yesterday, with an accompanying statement offering to release Gandhi for the period of the fast, which offer he has refused, stating that if released he will abandon the fast.

It was also announced that the Government of India proposed to issue in due course a full statement on the origin and development of the movement which was initiated in August, and the measures which they have adopted to deal with it.

2. Sir P. Thakurdas's appeal — News item in *The Hindu*

Jayakar Collection – File No. 527

[NAI]

Bombay, Feb. 10.

An appeal to the Viceroy to release Mahatma Gandhi unconditionally with a view to enabling him to review the conditions that have developed since his arrest in August last is made by Sir Purshotamdas 'Thakurdas' in a telegram he has sent to H.E. Viceroy on behalf of the East India Cotton Association.



3. Correspondence between Gandhiji and Tottenham (before the intended fast) published in *The Hindu*

Jayakar Collection – File No. 527

[NAI]

New Delhi, Feb. 11.

The text of certain letters that passed between the Additional Secretary to the Government of India in the Home Department and Mr Gandhi is published to supplement the Correspondence already released to the Press, says a Press communique.

Sir Richard Tottenham, Additional Secretary to the Home Department, wrote to Mr Gandhi on February 7.

Dear Mr Gandhi,

The Government of India have been informed by His Excellency the Viceroy of your intention as communicated to him, of undertaking a fast for 21 days in certain circumstances. They have carefully considered the position, and the conclusions that they have reached in the light of such consideration are set out in the statement of which a copy is enclosed¹ which they would propose, in the event of your maintaining your present intention, to release in due course to the Press.

The Government of India, as you will see from their statement, would be very reluctant to see you fast, and I am instructed to inform you that, as the statement makes clear, they would propose that, should you persist in your intention, you will be set at liberty for the purpose, and for the duration, of your fast as from the time of its commencement. During the period of your fast there will be no objection to your proceeding where you wish, though the Government of India trust that you will be able to arrange for your accommodation away from the Aga Khan's Palace.

Should you, for any reason, find yourself unable to take advantage of these arrangements, a decision which the Government of India greatly regret, they will of course suitably amend the statement, of which a copy is now enclosed before it issues. But they wish me to repeat, with all earnestness, their anxiety and their hope that the considerations which have carried so much weight with them will equally carry weight with you, and you will not pursue your present tentative proposal. In that event, no occasion will of course arise for the issue of any statement of any kind.

Yours sincerely,

R. Tottenham.

Gandhiji's Reply 'No Fast if Released'

Gandhiji wrote in reply on February 8.

Dear Sir Richard,

I have very carefully studied your letter. I am sorry to say that there is nothing in the

correspondence which has taken place between His Excellency and myself, or your letter, to warrant a recalling of my intention to fast. I have mentioned in my letter to H.E. the conditions which can induce prevention or suspension of the step.

If the temporary release is offered for my convenience, I do not need it. I shall be quite content to take my fast as a detenu or prisoner. If it is for the convenience of the Government, I am sorry I am unable to suit them, much as I should like to do so. I can say this much that I, as a prisoner, shall avoid, as far as is humanly possible, every cause of inconvenience to the Government save what is inherent in the fast itself. The impending fast has not been conceived to be taken as a free man. Circumstances may arise, as they have done before now, when I may have to fast as a free man. If, therefore, I am released, there will be no fast in terms of my correspondence above-mentioned. I shall have to survey the situation *de novo* and decide what I should do. I have no desire to be released under false pretences. In spite of all that has been said against me, I hope not to belie the vow of truth and non-violence, which alone makes life livable for me. I say this, if it is only for my own satisfaction. It does me good to reiterate openly my faith, when outer darkness surrounds me, as it does just now.

I must not hustle the Government into a decision on this letter. I understand that your letter has been dictated through the telephone. In order to give the Government enough time, I shall suspend the fast, if necessary to Wednesday next, 10th instant.

So far as the statement proposed to be issued by the Government is concerned, and of which you have favoured me with a copy. I can have no opinion. But if I might have, I must say that it does me an injustice. The proper course would be to publish the full correspondence and let the public judge for themselves.

Yours Sincerely,

M.K. Gandhi.

Government's Reply

Sir Richard replied on February 8 as follows:

Dear Mr Gandhi,

I am instructed to acknowledge the receipt of your letter of 8th February, 1943, which has been laid before the Governor-General-in-Council. The Government of India noted your decision with great regret. Their position remains the same, that is to say, they are ready to set you at liberty for the purpose and duration of your fast. But if you are not prepared to take advantage of that fact, and if you fast while in detention, you will do so solely on your own responsibility and at your own risk. In that event you will be at liberty to have your own medical attendants and also to receive visits from friends, with the permission of Government during this period. Suitable drafting alterations will be made in the statement which the Government of India would, in that event, issue to the Press.

Yours Sincerely,

R. Tottenham.

1 Not printed.



4. Reaction in Delhi on Gandhiji's fast and C. Rajagopalachari's appeal — News item in *The Hindu* (dt 12.2.1943)

Jayakar Collection - File No. 527

[NAI]

Mr William Phillips, President Roosevelt's Personal Representative, who had intended leaving Delhi for Calcutta visiting Allahabad *en route* is likely to cancel the tour, in view of Gandhiji's fast and remain in Delhi to watch developments.

It is not clear at all whether the Executive Council is unanimously behind the Viceroy's decision which has culminated in Gandhiji's three weeks fast. When the arrests took place in August last, the whole world was informed that the decision had the unanimous support of all Indian Members of the Council. A similar claim, according to reports freely circulating in Delhi, will not be made this time.

It is believed London gave Delhi a free hand to deal with the situation entirely according to the discretion of the man on the spot, but Delhi had heavy commitments, having assured provincial Governments six months ago that the methods by which the movement is put down and secondly there would never be negotiations with the Congress leaders.

An interesting feature regarding publicity arrangements is that while London issued the full text of the Gandhi-Viceroy correspondence yesterday, Washington has only the Government of India communique, the rest being left to Sir G.S. Bajpai's press correspondents. It is also significant that exchange of views between Gandhiji and the Viceroy on the subject of release for the purpose and duration of the fast and Gandhi's reasons for rejection of the offer have been briefly summarized in the official communique and the actual texts of messages have been withheld from publication. Incidentally, it is explained that should persons like Rajagopalachari renew their application for interview with Gandhiji, they are likely to be considered favourably.

C.R.'s Appeal

Madras, Feb. 11

Mr C. Rajagopalachariar has issued the following statement on Gandhiji's fast.

I have differed from Gandhiji and perhaps even more than that I have differed from the Congress. It is, therefore, difficult to find proper expression for my feelings on the fast that Gandhiji has undertaken. Nationwide grief and anxiety over the fast may be ignored by the British Government in India. They may plant themselves firmly on their policy of repression undeflected by the fast. They believe that their case is so just and their exposition thereof so clear that there will be not a stir in world-opinion and even if there be any uneasiness in some quarters, it can in the last resort be checked through press-control. National goodwill is however a far more precious asset than temporary administrative success.

Such success at the cost of goodwill is fraught with evil for the future. If we lived only for the present, then why this war and all the carnage and suffering involved? The future cannot be won for the world through the administrative technique followed in Delhi. To maintain

the claim of trusteeship and its corollary of the right to impose even temporary rule over another people it is not enough merely to prove the ability to suppress them. The trustee should understand and appreciate the feelings of the people governed. National grief and anxiety over the fast must be recognised.

For what specific purpose has Gandhiji undertaken this fast for 21 days? He has not undertaken it as a mere demonstration of his disapproval of what the Viceroy has done. Behind the fast is a hope that there will be change of heart on the part of the Viceroy and that something that was unjustly denied to him will now be granted. The fast is not an end in itself to Gandhiji. Release for the purpose and for the duration of the fast obviously does not meet the situation.

Whatever might have been apprehensions of the Government and the grounds on which they say compelled them to arrest him, there is no doubt whatsoever that he expected that he would be free for some time and that he would have conversations with the Viceroy as well as his fellow-workers before he would be called upon to execute the resolution passed in Bombay. It is clear, that Gandhi was taken by surprise at the precipitate action of the Government. The question is not whether he was entitled to expect delay on the part of the Government. It is certain that in fact he expected to be given time and scope for frank and full discussion. The telegrams exchanged between him and me on the 6th¹ and 7th² of August will show that he was confident he would have further opportunities for negotiations with the Muslim league and the British Government. It is for Lord Linlithgow to consider the position calmly and do what a few days later may be too late.

If I may indulge in some prognosis, if Gandhiji is set free he will be able to see for himself how events have developed. From inside prison his creed does not, permit him to judge things or advise the nation. But it is obvious that he thinks the time has arrived for him to review the position. Whatever may be the Government's suspicions, I am certain that he will do all he can when he is free to stop all underground activities of sabotage and violence. He may no doubt do his best at the time to push forward the claim for a real National Government responsible to a popularly elected Assembly, the machinery being adjusted to meet war-time difficulties and the Muslim League's claims. But do the British Government think that this should be discouraged? Would the setting up of a National Government be bad in the opinion of the British Government or would the goodwill of India be too dear a purchase at this price?

When I asked the Viceroy in November last to let me see Gandhiji it was to further a Congress-League settlement. It is obvious that during the fast, it would not be permissible to put on him the strain of discussing such questions. The present issue awaits solution at Delhi.

Love. Babu

1 C. Rajagopalachari to Mahatma Gandhi

Your letter forgive persistence nothing new in Jinnah's allegation. Feel you should ignore them and definitely offer him such quota of provisional Government as he wants and ask him to nominate his men. This along with your names on behalf of Congress will Nationalize your demand of Britain and force acceptance of proposal. Rajagopalachari.

2 Telegram from Mahatma Gandhi at Bombay to Mr C. Rajagopalachari dated 7-8-1942.

Every effort has been and will be made in direction indicated by you though not identical.

5: Indian youth demonstrate — News item in the *Daily Worker* (dt 12.2.1943)

Daily Worker (London)

[NAI – MF Acc. No. 2430]

Following the beginning of Gandhi's fast, Indian students left schools and colleges at Karachi and Lahore, and held demonstrations yesterday.

'The Lahore district magistrate has banned for one week all meetings in furtherance of Congress propaganda', says Reuter.

All textile mills at Ahmedabad were closed yesterday as on the previous day, and Bombay markets are still shut.

The Committee of the Indian Merchants Chamber in Bombay telegraphed to the Viceroy appealing for the unconditional release of Gandhi.

6: All-party leaders to urge unconditional release of Gandhi — News item in *Free Press Journal* (dt 12.2.1943)

Jayakar Collection – File No. 527

[NAI]

A lot is happening behind scenes in New Delhi to bring about an unconditional release of Gandhiji, which would mean the ending of the fast regarding which grave concern is felt among all sections including officials. Prominent persons are being sounded to hold an All-Parties Conference to urge Gandhiji's release.

Some members of the Assembly along with Messrs K.M. Munshi, 'G.D. Birla,' G.L. Mehta' and others are preparing the ground for such a conference to be held either in New Delhi or on any other central place without loss of time. Persons like Messrs C. Rajagopalachari, Sir T.B. Sapru, Mr M.R. Jayakar, the Rt. Hon. V.S. Srinivasa Sastri, Provincial Ministers, ex-Ministers and other politicians are being sounded.

The Muslim League party will not oppose Gandhiji's release I learn, although in the Nationalist party there are dissensions, and there are members who do not ask for the Mahatma's release on political grounds. Another informal conference of the Assembly members and others is being held at Pandit Kunzru's place this evening.



7: Sir S. Radhakrishnan's appeal – *The Hindu* (dt 12.2.1943)

Jayakar Collection – File No. 527

[NAI]

Benares, Feb. 12.

Symbol of National Consciousness

Presiding over a largely attended meeting of the staff and students of the Benares Hindu University this afternoon, the Vice-Chancellor, Sir S. Radhakrishnan related the history of the recent events. Turning to Mahatma Gandhi's fast, Sir Radhakrishnan said: 'Mahatma Gandhi is the symbol of National consciousness of this great country and in his suffering is reflected the humiliation of the country. He is an intrepid spirit with an impregnable will and a super human passion for truth and non-violence. In the correspondence between the Viceroy and the Mahatma that has just been released, Mahatmaji asserts that he is today as complete and as ardent a votary of truth and non-violence as at any time before. He believes that Congressmen are all followers of non-violence, and that leaflets and circulars emanating from the so-called Congress organisation suggesting a programme of subversive activities are unauthorized. He pleads with the Viceroy to take steps to end the present impasse'.

Continuing, Sir Radhakrishnan observed: We are relieved to know that he has declared his intention not to fast unto death. The present is a fast undertaken under limited conditions and with proper care. We hope and pray that he will be able to survive this ordeal. His immediate unconditional release is essential for allaying public apprehension and easing the present tension. The Independence of India is her birth-right. The cause and the good name of Great Britain demand it. We do hope that Gandhiji will be released and his advice sought and a National Government established.

Speaking about the University, the Vice Chancellor pointed out that it was a great National institution, and any injury to it would be a national dishonour. 'We have taken the responsibility of internal peace and order', said Sir Radhakrishnan, 'and anything which violates internal order will be an invitation to external interference. If we are interested in preserving the prestige of the university, we must do nothing which will bring the institution into disgrace or hurt its present position. Anyone who indulges in activities which will hurt the University is a traitor to the University and a traitor to the country'.

Sir Radhakrishnan then put the following resolution and asked the audience to observe silence for two minutes as a token of their sincerity and good faith.

This meeting expresses its deep concern and sorrow at the fast undertaken by Mahatma Gandhi. While deploring the course of events leading to the fast, this meeting appeals to the Government to release Mahatma Gandhi immediately and unconditionally, seek his advice in establishing a National Government in the country.

The meeting prays that Mahatmaji will have the strength and the health to stand this ordeal and survive it.



8. Hindu Mahasabha's demand to release Gandhi – News item in *The Hindu* (dt 12.2.1943)

Jayakar Collection - File No. 527

[NAI]

New Delhi, Feb. 13

Anxiety about Mahatma Gandhi's health in view of his fast is expressed in a resolution passed today by the Working Committee of the Hindu Mahasabha, Mr Savarkar presiding. The resolution proceeds 'prayerfully to wish that his spiritual strength will enable him to survive the ordeal'. 'In case, however, the strain of the fast threatens to endanger his health to any serious extent', says the Committee. 'The Government must set aside all political considerations, and release him to save his precious life'.

'Nevertheless, this meeting notes emphatically', proceeds the resolution, 'that fasting as a political weapon, used with a view to bringing about constitutional changes and political revolutions irrespective of their inherent merits or demerits, especially under the political circumstances and foreign domination prevailing in India today, is bound to be futile, detrimental and suicidal, Congressmen or others to exploit this fast for political ends, and for example, to negotiate with the Muslim League or to arrive at an agreement to end the present deadlock, without consulting the Hindu Mahasabha and securing its agreement, would not in any case be binding on the Hindus. The Mahasabha desires all political organisations and the Government to understand that the Mahasabha will resist any encroachment on Hindu rights or any scheme undermining Indian integrity'.

9. Dr G.L. Mehta's appeal to Viceroy 'unconditional release called for' – News item in *The Hindu* (dt 13.2.1943)

Jayakar Collection - File No. 527

[NAI]

New Delhi, Feb. 13

'If Gandhiji's decision to fast could not be altered, the Government should at least have unconditionally released him' says Mr G.L. Mehta, President of the Federation of Indian Chambers of Commerce and industry in a telegram to His Excellency to Viceroy. He adds:

'The very fact that Gandhiji has unequivocally condemned violence as was of course expected, and offered, by implication, to do so again if he is a free man to go into the developments of the last six months if he is in a position to influence and control events, shows what an admirable opportunity was provided to make this a starting point for resolving the present impasse, which it is evident from the correspondence, Gandhiji himself ardently

desired to end. He has explained the object and implications of the August resolution of the Congress and has made it clear that it is definitely against Fascism in any shape or form' and 'tenders co-operation in war effort under circumstances which alone can make effective and nation-wide co-operation possible'. He has stressed the fact that the Congress was making every effort to identify India with the Allied cause and that the operative part of the resolution, whatever views may be held about it, was to come into force only in case the negotiations broke down and the Congress demand was finally rejected.

'Gandhiji has categorically stated that the Congress was willing and prepared for the Government inviting Mr Jinnah to form a National Government, subject to certain adjustments as may be necessary for the duration of the war, such Government being responsible to a duly elected assembly. It is evident that the adjustments referred to were in the interests of the war strategy of the United Nations. As regards any positive or concrete proposal to be made on behalf of the Congress, Gandhiji suggested that the should be permitted to consult his colleagues on the Working Committee.

'It is a tragedy of the Indian situation today that when there is so much common ground both as regards the need of effective National resistance against aggression and about the recognition of India's independent status, it has not been possible to evolve a settlement that would satisfy India's aspiration for an immediate National Government and at the same time, broadbased National defence on popular will for the effective prosecution of the war.

'I should like to add that the belief entertained by people, that Gandhiji stood for non-violence and did not and could not approve of acts of sabotage and violence, has been amply confirmed by the correspondence now released, and this would, no doubt, help to clear the atmosphere and cannot but have a healthy public reaction. Advantage could surely have been taken of this opportunity to see that there was a reversal of the Government policy in order to prevent the situation from drifting further and to bridge the widening gulf between Britain and India. On the other hand, the consequence which might follow any unfortunate result of this fast are too sad to contemplate. The feelings of bitterness and resentment which prevail today, would be accentuated beyond measure, leading to such estrangement as would seriously impair Indo-British amity. In the interest of amicable Indo-British relationship, and for the sake of the united and vigorous war effort of India I would earnestly appeal to His Excellency to release unconditionally, a person who is held in sincere and deep reverence by the vast masses of the people in this country and still has the will and the power to cement the bond of Indo-British friendship.'

10. Mr Humayun Kabir's statement — News item in *The Hindu* (dt 13.2.1943)

Jayakar Collection — File No. 527

[NAI]

Calcutta, Feb. 13.

Supporting the move to call a conference to devise means for ending the Indian deadlock and securing the release of Mahatma Gandhi, Mr Humayun Kabir, M.L.C., Member of the

Standing Committee of the All-India Azad Conference in a statement to the press says: "The life of Mahatma Gandhi is precious possession not only for India but for the world as a whole. Irrespective of all political considerations and on humanitarian grounds alone, the least that the Government of India can do is to release him unconditionally and without delay. The move to call a representative conference to review the situation and devise such means as be possible to secure the release is therefore a move in the right direction.

11: Communist Party Committee to meet to discuss Mahatma Gandhi's fast— Report in *The Hindu* (dt 13.2.1943)

Jayakar Collection - File No. 527
[NAI]

Bombay, Feb 13

The Central Committee of the Communist Party will hold an one-week session from tomorrow to discuss the political situation in the country and the food problem.

Tomorrow's session will be devoted to discussion of Mahatma Gandhi's fast.

12: Bengal Hindu-Muslim unity association's appeal Report in *The Hindu* (dt 13.2.1943)

Jayakar Collection - File No. 527
[NAI]

Calcutta, Feb. 13

The president of the Hindu-Muslim Unity Association, Bengal, has sent a telegram to His Excellency the Viceroy expressing concern at the fast undertaken by Mahatma Gandhi and urging his release.

13: Bengal Muslim M.L.C's statement report in *The Hindu* (dt 13.2.1943)

Jayakar Collection - File No. 527
[NAI]

Calcutta, Feb. 13.

Khan Bahadur Mahomed Jan., M.L.C. has issued the following statement:
The twenty-one day's fast undertaken by Gandhiji at this old age and in his present weak

state of health is the most severe ordeal which one can get through, and I pray to God to give him sufficient strength to stand this hazardous test and spare him long to serve his poor country and shattered humanity by his gospel of universal love and equality for attaining permanent world-peace.— U.P.C.

14: Gandhi's condition deteriorating — Report in the *Daily Worker* (dt 16.2.1943)

Daily Worker (London)

[NAI – MF Acc. No. 2430]

'Mr Gandhi has found some difficulty in taking water and had rather a restless day on Sunday', said a communique issued by the Government of Bombay yesterday. 'His condition has shown some deterioration', the communique added.

Motions on the adjournment relating to Mr Gandhi's fast were talked out in both the Legislative Assembly and the Council of State (the Upper House) yesterday afternoon, reports Reuter.

Negotiate with India

The No. 1 branch of the Union of Postal Workers have passed unanimously a resolution which considers it 'essential that negotiations should be immediately reopened between the Government and responsible leaders of the Indian people in which the National Congress should participate'.

15: Government communique report in *The Hindu* (dt 17.2.1943)

Jayakar Collection – File No. 527

[NAI]

New Delhi, Feb. 17

The following press communique has been issued:

The Hon. Sir H.P. Mody, K.B.E., the hon. Mr N.R. Sarker and the Hon. Mr M.S. Aney have tendered their resignation of the office of Member of the Governor General's Executive Council. His Excellency the Governor-General has accepted their resignations.

The report of the resignations has caused no surprise, the only question discussed during the last few days being the number of those who would carry their differences with the Viceroy to the point of resignation, whether three or five. Though the official communique confines itself to a bare announcement, the resignations were due to fundamental differences with the Government of India's policy and it is an open secret that the issue was the unconditional release of Gandhiji.

No Change in Govt. Policy

The fact that the Viceroy has accepted the resignations is interpreted as indicating that there must be no release of Gandhiji even if his health should deteriorate further and that the Government of India are prepared to take risk of his inability to go through the three weeks ordeal.

The Viceroy has already consulted the Governors of Madras and the Central Provinces and will discuss the situation with the Governor of the United Provinces early Next week. So far, it is understood, the Provincial Governors have given 're-assuring' replies regarding the possible repercussions in their respective provinces in endorsing a policy of firmness. — F.O.C.

Little Surprise in Non-official Circles

The resignation of the three Member had caused little surprise in unofficial circles.

Whispers of this development were heard in the Assembly lobbies today. Towards the close of the day's sitting, it was noticed that the Treasury Front Benches were practically empty.

Mr Yusuf Haroon, the Muslim League member from Karachi, who was making his maiden speech in the course of the debate on the food situation, began his remarks with a reference to the absence of the Government Members including the Food Member himself. Mr Sarkar, the Leader of the House, Mr Aney and the Supply Member Sir Homi Mody, besides the Finance Member and the War Transport Member and the Home Member, who is ill. Mr Haroon suggested that their absence was a clear proof of what little importance Government attached to the proceedings of the House.

Sir Edward Benthall, War Transport Member intervening, drew attention to the fact that he was present in the House.

Mr Haroon: What about the others?

The Chair suggested that presumably important work kept them away.

Have Stood up for India's Self-respect

The three Members have been congratulated on their action by many friends among whom the news became quickly spread. Pandit Kunzru and Mr P.N. Saptu in a statement said. In resigning at this stage, they have shown that they place the interests of their country above all other considerations, and they have stood up for the self-respect of India. We congratulate them on their patriotism.— A.P.I.

16: Resignation of three members of the Viceroy's council — Report in *The Hindu* (dt 18.2.1943)

Jayakar Collection — File No. 527

[NAI]

Gandhiji's Release — The Issue

New Delhi, Feb. 18.

A joint statement issued today by Messrs M.S. Aney, N.R. Sarker and Sir H.P. Mody says: 'Our resignations from H.E. the Governor General's Council have been announced, and

all that we desire to do is to say by way of explanation that certain differences arose on what we regarded as a fundamental issue (the issue of the action to be taken on Mahatma Gandhi's fast) and we felt we could no longer retain our offices.

'We wish to place on record our warm appreciation of the courtesy and consideration H.E. the Viceroy extended to us throughout the period during which we had the privilege of being associated with him in the Government of the country'.

17: Sir Douglas Young,* Chief Justice, Lahore to Laithwaite

Linlithgow Collection
[NAI – Acc. No. 2344]

*Hotel Cecil, Delhi,
February 18th, 1943.*

My dear Laithwaite,

I have noticed with interest the news concerning old Gandhi's fast. He has limited it to three weeks; he is taking orange juice; he is being attended by a Nature Cure Specialist.

I have twice done fasts at a Nature Cure place in England and have read the books on fasting and Nature Cure generally. I did a fast of three weeks on orange juice and later 14 days on water followed by two weeks on orange juice. I did my work at the bar in London during the fast and a seven mile walk every day during the second. Though I am slightly more robust than Gandhi I have seen several people as thin as he doing fasts with great benefit to themselves. He also I think suffers from high blood pressure for which fasting is clearly indicated

You might like to find out if our old friend consulted his Nature Cure Specialist before commencing his fast. Whether he has complained of blood pressure lately. In any event people like myself who believe in Nature Cure do a fast periodically and it is some time since Gandhi has done one, and it is high time he did another. Three weeks is a very normal period for an orange juice fast even for a man of seventy.

The point is: Can we eliminate the possibility that the old man is doing this fast for his own benefit and at the same time making a political stunt of it? The evidence is against him.

Yours sincerely,

Douglas Young.

P.S.: If he is having an enema every day – most important part of a 'cure' – the evidence would appear to be complete.



18

C. Rajagopalachari to Sir Gilbert Laithwaite

Linlithgow Collection

[NAI - Acc. No. 2344]

28, Ferozshah Road, New Delhi,
February 19th, 1943

Dear Sir Gilbert,

The Conference of Leaders invited to consider the situation arising out of the fast declared by Mahatma Gandhi met this afternoon and they appointed a Committee to draft a Resolution to be adopted by the Conference. The Committee consisted of the following persons:

Right Hon'ble Sir Tej Bahadur Sapru; Dr M.R. Jayakar; Dr Shyama Prasad Mukerji, Sir Rajagopalachari; Mr Allah Bukhsh; Mr G.L. Mehta; Mr K.M. Munshi; Sir Jagdish Prasad, Mr N.M. Joshi; Mr Bhulabhai Desai; Sir Maharaj Singh; Master Tara Singh; Sir Ardeshr Dalal; Pandit H.N. Kunzru; Sir A.H. Ghuznavi; Mr Kasturbhai Lalbhai; Mr K.C. Neogy; Raja Maheswar Dyal, Dr Bannerji; Mr H.A. Lalljee; Mr N.C. Chatterji; Mr Randive; Dr Moonje. Mr Kiron Shankar Roy; Khwaja Hasan Nizami; Muhammad Zahiruddin; Mrs Sarala Chaudhurani; Dr Shaukat Ansari; Mr M.A. Kazmi; Mr Zafar Hossain; Mrs K. Sayani; Mr Abdul Halim Siddiqi and Mrs Hanna Sen.

They have unanimously adopted the enclosed Resolution for being placed before the Conference tomorrow morning. But, in view of the alarming reports received about the condition of Mahatma Gandhi, the Committee resolved to send the Resolution to His Excellency, in advance, for immediate action. I, accordingly, do so, with the request that you may kindly place it before His Excellency.

Yours sincerely,

C. Rajagopalachari.

(Enclosure)

'This Conference representing different creeds, communities and interests in India, gives expression to the universal desire of the people of this country that, in the interest of the future of India and of international goodwill, Mahatma Gandhi should be released immediately and unconditionally. This Conference views with the gravest concern the serious situation that will arise if the Government fail to take timely action and prevent a catastrophe. This Conference, therefore, urges the Government to release Mahatma Gandhi forthwith'.

C. Rajagopalachari

(Enclosure 2)

List of persons who moved and supported the Resolution.

1. Dr M.R. Jayakar.
2. Dr Shyamaprasad Mookerjee (Hindu Mahasabha)
3. Raja Sir Maharaj Singh, C.I.E., M.L.A. (Indian Christians)

4. Sir Suleiman Cassum Haji Mitha, C.I.E. (Muslims).
5. Master Tara Singh (Sikh)
6. Dr Mackenzie (British Christian Missionaries)
7. Srimati Saraladevi Chadhurani (Women's League)
8. Mr Allah Bukhsh (Azad Muslims)
9. Sir Vijaya of Vizianagram (Zamindars)
10. Sir Abdul Halim Ghuznavi, M.L.A. (Central) (Muslims)
11. Maulana Ahmed Sayeed Saheb (Jamiat-ul-Ilema)
12. Mr N.M. Joshi, M.L.A. (Central) Labour
13. Mr Abdul Qaiyum, M.L.A. (Central) (Khudai Khidmatgars).
14. Mr Gaganvihari L. Mehta (President, Federation of Indian Chambers of Commerce and Industry).
15. Mr Zahiruddin (All-India Momins)
16. Mr Humayun Kabir (Students' Federation)
17. Hon'ble Pandit H.N. Kunzru (Servants of India Society).
18. Mr K.M. Munshi
19. Sardar Sant Singh, M.L.A. (Central) (Sikhs)
20. Mr R. ... (Communists).

Names of some of the persons who attended the Conference.

1. The Right Hon'ble Sir Tej Bahadur Sapru
2. Sjt. C. Rajagopalachari, ex-Premier, Government of Madras.
3. Dr M.R. Jayakar, ex-judge, Federal Court.
4. Dr Shyama Prasad Mookerji, Working President, Hindu Mahasaba
5. Mr M.S. Aney, Ex-Member of the Viceroy's Executive Council
6. Sjt. Bhulabhai Desai, Leader of the Opposition Central Legislative Assembly.
7. Dr Subbarayan, Ex-Minister, Madras Government.
8. Mr K.M. Munshi, ex-Home Member, Government of Bombay.
9. Kunwar Sir Maharaj Singh, representing Indian Christian Community.
10. Mr Allah Bux, ex-Premier, Sind Government
11. Dr Sachidanand Sinha, Vice-Chancellor, Patna University.
12. Master Tara Singh, Akali Sikh Leader
13. Mufti Kifayat Ullah, President, Jamait-ul-Ulema
14. Maharajkunwar of Vijiyanagram, Zemindar, Benares
15. Giani Kartar Singh, Sikh Leader
16. Khwaja Hasan Izami
17. Mr Srinivasan, President, Indian Newspaper Editors Association.
18. Hon'ble Sir Shanti Das Askuran, member, Council of State
19. Hon'ble Sirdar Saheb Sir Suleman Cassum Haji Mitha, Member, Council of State
20. Mr A.C. Dutta, Deputy President, Central Legislative Assembly.
21. Maulana Ahmed Sayeed Sahib
22. Mr M.A. Kazmi, M.L.A. (Central).
23. Mr K.C. Neogi, M.L.A. (Central).
24. Mr Jamnadas Mehta, M.L.A. (Central).
25. Sir Abdul Halim Guznavi, M.L.A. (Central), President, Nationalists Muslim.
26. Mr N.M. Joshi, M.L.A. (Central).

27. Mr Abdul Quayyum, M.L.A. (Central).
28. Mr B.T. Ranadive, representing Communists Party
29. Dr B.S. Moonje (Hindu Mahasabha).
30. Hon'ble Pundit H.N. Kunzru (Servants of India Society).
31. Rev. J. Mackenzie (Missionary).
32. Dr Hodge (Missionary).
33. Dr P.N. Bannerji, M.L.A. (Central)
34. S. Sant Singh, M.L.A. (Central).
35. Hon'ble Mr P.N. Saprú, Member, Council of State.
36. Hon'ble Mr V.V. Kalikar, Member, Council of State.
37. Raja Sahib of Nilampur.
38. Mr Abdul Rashid Chowdhurie, M.L.A. (Central).
39. Raja Maheshwar Dayal, Hindu Mahasabha.
40. Mr G.L. Mehta, President, Federation of Indian Chambers of Commerce & Industry.
41. Mr J.R.D. Tata, Chairman, Tata Sons.
42. Mr G.D. Birla
43. Sir Shri Ram
44. Mr Walchand Hirachand, Chariman, Scindia Steam Navigation Company.
45. Mr Kasturbhai Lalbhai.
46. Sir Ardeshir Dalal, Managing Director, Tata Iron & Steel Company.
47. Sir Chunilal V. Mehta.
48. Mr Haridas Madhavdas, President, Indian Merchants Chamber, Bombay.
49. Sir Badidas Goenka, ex-President, Indian Chamber of Commerce, Calcutta.
50. Seth R.K. Dalmia.
51. Dr Chela Ram, representing all commercial interests in Karachi.
52. Mr Brajmohan Birla.
53. Mr N.C. Chatterji, M.L.A. (Bengal).
54. Mr Kiron Shankar Roy.
55. Mr Mohamed Zahiruddin.
56. Dr Shaukat Ansari.
57. Mr Zafar Husein.
58. Mr Abdul Halim Siddiquie.
59. Mr Humayun Kabir, Students' Federation, Calcutta.
60. Shrimati Sarala Devi Chowdhurani.
61. Mrs Hanna Sen.
62. Mrs K. Sayani.
63. Mrs Sultan Singh, Delhi Women's League.

Names of some of the persons who associated with the Conference.

1. The Metropolitan of India
2. Pundit Madan Mohan Malaviya
3. Right Hon'ble Srinivasa Sastri, Madras
4. Dr Bhagwan Das, Benares.
5. Sir Chunilal B. Mehta, ex-President, Federation of Indian Chambers of Commerce & Industry.
6. Rajkumari Amrit Kaur

7. Mr Mahomedboy I.M. Rowjee, Vazir of His Highness Aga Khan.
8. Sir Padampat Singhania, Cawnpore
9. Sir Purshotamdas Thakurdas, President, East India Cotton Association, Bombay.
10. Raja Bahadur Govindlal Shivilal, member, Council of State.
11. Raja Sir Annamalai Chettiar, Madras
12. Sir Sivaswami Iyer, Bangalore
13. Mr Tulsidas Kilacand, Chairman, Bank of Baroda
14. Mr Shareelah Hamidali, Aligarh
15. Mr Ramdeo A. Podder, Bombay.
16. Dr Kharc, ex-Premier, Central Provinces.
17. Mr Pranal Devkaran Nanji, Bombay.
18. Mr Ambalal Sarabhai, Ahmedabad
19. Begum Hamid Ali, Aligarh
20. Mrs Ammu Swaminathan, Madras.
21. Mr Hoshang N.E. Dinshaw, Karachi.
22. Mr Shantikumar Morarji, Scindia Steam Navigation, Bombay.
23. Raja Narendra Nath, Lahore.
24. Mrs Muthulakshmi, Madras.
25. Mr Jamshed N.R. Mehta, ex-Mayor, Karachi Municipality and ex-President, Federation of Indian Chambers of Commerce and Industry.
26. Mr Thakkar Bapa, President Harijan Sevak Sammiti.
27. Mr Bijay Prasad Singh Roy, Calcutta.
28. Mr K.M. Thakersey, President, Bombay Millowners Association, Bombay.
29. Mr Ramananda Chatterji, Editor, *Modern Review*, Calcutta.
30. Lala Duni Chand, Congress Leader, Punjab.
31. Luxmibai Rajwade, Poona.
32. Mr Satyamurthi, Deputy Leader, Congress Party. Legislative Assembly.
33. Sir Sita Ram, Meerut
34. Mr M.A. Master, General Manager, Scindia Steam Navigation Company, Bombay.
35. Mr Jalaluddin Hashmi.
36. Sir Wazir Hussain, Lucknow
37. Mr Hansa Mehta, ex-Parliamentary Secretary to Bombay Government.
38. Mr S.A. Brelvi, Editor, *Bombay Chronicle*
39. Kunwar Guru Narain.
40. Sardar Bahadur Baldeo Singh, Minister, Punjab Government, Lahore.
41. Pandit K. Santanam, Member, Legislative Assembly
42. Messrs Santosh Kumar Bannerji and Promathanath Bannerji, Calcutta.
43. Mirza Yarjung, Hyderabad.
44. Kamal Nain Bajaj
45. Mr N.N. Law, Calcutta.
46. Mrs Kale, Nagpur.
47. Mr Hari Ram Sethi, Lucknow.
48. Mr Ispahani, Calcutta.
49. Luxmi Menon, Lucknow.
50. Kumararajah Sir Muthiah Chettiar of Chettinad, Madras.
51. Mr Hoosmani, M.L.A.

19: India's future will depend on Gandhi's release — News item in the *Daily Worker* (dt 19.2.1943)

Daily Worker (London)

[NAI - MF Acc. No. 2430]

By a Special Correspondent

'The Future of the Indian nation depends on whether we get Gandhi out or not', declares a manifesto issued by the Communist Party of India in connection with Gandhi's fast, which it calls 'a desperate summons to the entire nation to save itself from extinction'.

The statements in Gandhi's letters, continues the manifesto, destroy the slanders against Congress and sweep aside the obstacles and prejudices that have stood in the way of unity between the Indian patriotic parties, and between these and the peoples of United Nations.

Gandhi's letters show his great eagerness for settlement and he clearly opens the door to negotiations with the Moslem League and united negotiations with the Government.

Persistence by the Viceroy in his refusal will result in an all-round deepening of the crisis. But in a sense it opens a bigger opportunity for Congress-League unity, Indian national unity and unity with United Nations — than has ever existed before, because it isolates the reactionaries from every section of public opinion.

All patriotic organisations are rallying behind the demand for Gandhi's release—an example is the support for it in the Bengal Legislative Assembly by the spokesman of both the Moslem Leagues and the Hindu Mahasabha.

'In this critical hour of our Motherland's destiny', continues the manifesto, 'the Communist Party of India appeal to every brother party and to every patriot. Unite and win Gandhi's release to end the crisis'.

The manifesto points out to Congress patriots that Gandhi's clear disowning of the campaign of sabotage and anarchy places on them the responsibility to help to put an end to it on this basis to win over Moslem League members to join in the demand for Gandhi's release.

Similarly it points out to Moslem League patriots that the same fact—Gandhi's disavowal of the sabotage and anarchy—removes the barriers between the Congress and the Moslem League.

Prison bars are now the main obstacle remaining to a Congress-League agreement and the National Government which the League desires as much as Congress.

It is the continued imprisonment of Gandhi which stands between the League and the satisfaction of its just demand for self-determination.

It is no good looking to the Viceroy for self-determination — he has already rejected the principle, and to miss Gandhi's overture to the League is to miss the biggest chance for winning; both national salvation and the freedom of the Moslem masses.

In conclusion, the Indian Communist Party calls also to the Hindu Mahasabha, the Liberals, non-party patriots; the kisans (peasants), workers and Students for unity of all to end the crisis.

'Altogether to demand Gandhi's release! Forward to National Unity for winning a National Government for National defence of freedom. This is the closing slogan of the manifesto.'



20

Proceedings of the leaders' conference

File No. 19/6/43 – Home Poll (I)

[NAI]

Subject

Secret

Leaders conference held at Delhi on 19th Feb. 1943 in connection with Gandhi's fast.

The conference of leaders which has been widely referred to in the press commenced today (19.2.43) at 28, Ferozeshah Road, New Delhi (Office of the Federation of Indian Chambers of Commerce and Industries). The proceedings lasted from 3.30 p.m. to 4.35 p.m. and consisted of speeches by

- (a) Mr C. Rajagopalachari and
- (b) Mr K.M. Munshi.

The conference was then adjourned to 11.30 a.m. tomorrow (20.2.43) when Sir Tej Bahadur Sapru is expected to preside.

2. About 50 leaders attended this conference including the following:

| | |
|----------------------------|-----------------------------|
| Raja Maheshwar Dayal | Sir Ardeshir Dalal |
| Mr Abdul Rashid Chowdry | Mr Kasturbhai Lalbhai |
| Seth Walchand Hirachand | Sir Sri Ram (Delhi) |
| Mr G.D. Birla | Mr J.R.D. Tata |
| Mr N.R. Sarkar | Mr M.S. Aney. |
| Mr N.M. Joshi | Dr B.S. Moonje. |
| The Metropolitan of India | Rev. J. Mackenzie. |
| Hon'ble Pandit H.N. Kunzru | Sir A.H. Ghaznavi. |
| Kunwar Sir Maharaj Singh | Sir Jagdish Parshad |
| Dr Shyama Parshad Mookerji | Mr S. Rajagopalachari |
| Mr Bhulabhai J. Desai | Mr K.M. Munshi. |
| Mr Allah Bux. | Mr G.L. Mehta. |
| Master Tara Singh | Kh. Hassan Nizami (Delhi) |
| Sardar Tara Singh | Mufti Kafilat Ullah (Delhi) |
| Mr M.A. Kazmi | Mr A.C. Datta. |

3. In addition to the leaders there were about 150 spectators present including about 25 press representatives. The spectators included Lady J.P. Srivastava. Amongst the journalists were about half a dozen Americans.

4. There were some 200 spectators chiefly students, outside 28, Feroz Shah Road to which the leaders and others arrived. They displayed no rowdyism but on the arrival of Mr M.S. Aney shouted slogans of 'Inqlab Zindabad', 'Aney Zindabad' and 'Mahatma Gandhi ki jai'.

5. After welcoming those who had come to attend the conference. Mr Rajagopalachari said that the conference had been called to urge the unconditional release of Mr Gandhi

and would not discuss any controversial political matters. He emphasized the urgent need for releasing Mr Gandhi, and said that his release would ease the present situation. He criticized the statement made in the Council of State by the Hon'ble Sir Mohd Usman in opposing Mr Gandhi's release and described the Hon'ble Sir Mohd Usman as a 'yes sir' man and not a good adviser. He said that on the other hand Mr M.S. Aney he found that his good advice was rejected, he has no other alternative but to resign from the Executive Council. Continuing and in particular addressing his remarks to the foreigners who are now in India in large numbers, Mr Rajagopalachari emphasised that Mr Gandhi had been detained without trial and without being offered any opportunity to defend himself. Had Mr Gandhi been legally tried, convicted and imprisoned then he would not even have resorted to a fast. It was, continued Mr Rajagopalachari, no offence to fight for the freedom of one's country. To release Mr Gandhi would certainly help in subduing the acts of violence and sabotage which were taking place in the country as Mr Gandhi was hundred percent for non-violence. To accuse Mr Gandhi and to hold him responsible for violence and sabotage was doing a grave injustice to him, as how could he be responsible when he was denied access to his people.

Mr Rajagopalachari then referred to the meaning of fast 'to capacity' and said that this word definitely did not mean, as some people appeared to think, that the fast would be broken before the end of three weeks. Mr Gandhi has fixed his capacity at three weeks and he would not change his decision and would not give up the fast before the end of this period. It was possible, however, said Mr Rajagopalachari that Mr Gandhi might have mis-judged his capacity to fast for three weeks, and that on account of his old age and weakened powers of resistance, his capacity to fast might not extend to this period. However this might be, Mr Gandhi would not change his decision unless the Government came to his help by releasing him unconditionally. Concluding Mr Rajagopalachari said that with them Mr Gandhi would help in improving the situation, but away from them the situation would deteriorate.

6. Mr K.M. Munshi commenced by reading out about 100 messages either from persons who had been unable to respond to invitation to attend the conference or from persons or organisations wishing the conference success. Amongst the messages thus read out were one from the All India Women's Conference, the Secretary to H.I.I. The Agha Khan, the Communist Party of India and the Communist Party of the United Provinces. He then announced that committee was to be formed in order to frame a resolution to be put before the conference on 20-2-43, and in this connection gave about 29 names as members of the committee. An objection was raised by Mrs Raghunandan Saran of Delhi (her husband is detained) that the committee contained no women and she proposed that Mrs Hanna Sen' (Principal of Lady Irwin College, New Delhi) and one Mrs Siani be taken on the committee and this was accepted. No other objection was raised and the names put forwarded by Mr K.M. Munshi were accepted unanimously.

Amongst the members of the committee are:

| | |
|-----------------------|--------------------------------|
| Mr C. Rajagopalachari | Mr K.M. Munshi |
| Sir Jagdish Parshad | Mr M.S. Aney |
| Dr B.S. Moonje | The Hon'ble Pandit H.M. Kunzru |
| Dr P.N. Bannerji | Dr Syama Prashad Mookerji |
| Mr Allah Bux | Raja Maheshwar Dayal |
| Mrs Siani | Mrs Hannah Sen |

7. The Committee referred to in paragraph 6 above is meeting this evening (19-2-43) to draft the resolution to be placed before the conference.

Copy with one spare copy forwarded to the Director, Intelligence Bureau, Home Department, Government of India, New Delhi.

Signed (illegible) 19.2.43
Supdt. of Police, C.I.D., Delhi
19.2.43.

Report of the Last Day of the Meeting

1. The second and last sitting of the Conference of Leaders was held at 28, Feroze Shah Road, New Delhi, from 11.30 a.m. to 3 p.m. on 20-2-43 with Sir Tej Bahadur Sapru presiding. There were about sixty leaders participating in the conference and about three hundred spectators including press representatives. There were about one hundred and seventy-five persons, chiefly students, outside 28, Feroze Shah Road. The leaders present were mostly the same as on 19-2-43. Mr M.S. Aney on his arrival was again greeted with cheers. Mr N.R. Sarkar did not attend.

2. Before the proceedings of the conference started a two minutes silence was observed for prayers to be offered for the long life of Mr Gandhi.

3. The following is a brief report on the speeches delivered in the order that they were made:

Sir Tej Bahadur Sapru — Demanded the unconditional release of Mr Gandhi and expressed the view that All-India was behind him in this demand. Had carefully read the August resolution of the Congress adopted at Bombay and could find nothing objectionable in it and nothing to justify the action which Government had taken. Due to this action on the part of Government in arresting all the leaders the people of India had been goaded and on account of this acts of sabotage and violence had occurred but Mr Gandhi could not be held responsible for these acts. There was no judicial or legal backing to the action which Government had taken and was taking; all such action was executive and taken under Ordinances. Suggested the appointment of an impartial judicial tribunal to enquire into the events which had happened and to fix the responsibility for these events. Had no sympathy with 'rebels' but Mr Gandhi was not and certainly could not be called a rebel. Those who called Gandhi a rebel had forgotten British history and Sir Muhammad Usman should remember that the British always negotiated with 'rebels' and not with loyalists and 'people like us', and in this connection quoted the examples of Field Marshal Smuts and Mr de Valera. Qualities of Statesmanship and not of pure executive administration were required in dealing with the present problems and there was not much of the former qualities in the Government of India. If Government classed the Hindus as 'rebels' then why had it done nothing for the Muslims and why had it not invited Muslims to secure power in the Government. The people must see that Gandhi's life was saved. He (the speaker) was not a believer in fasts and was not a member of Congress but whatever his views were he took facts as they had developed and if Gandhi dies within the next forty-eight hours the task of reconciliation with the Hindus and the Indians in general will be impossible. Feeling in the country was rapidly rising and had even reached the highest circles and led to the resignations from the Executive Council, which in themselves reflected great discredit on Government. The situation in India had been deteriorating ever since the Cripps Mission and he (the speaker) could safely and authoritatively say that it was the fault

of Sir Stafford Cripps and of the British Government that the negotiations at that time had failed. Mr Gandhi's fast was the result of a feeling of frustration which had been created by Government and was not a move merely to secure his release. Mr Gandhi was a firm believer in the principles of non-violence and had once more reiterated his belief in these principles in his correspondence with the Viceroy and in view of this it was unjust on the part of Government to detain Gandhi without a trial and at the same time to expect him to admit his guilt and his responsibility for what had taken place. It would have been advisable for Government to place Gandhi's case before an independent tribunal. Repeated the demand for the unconditional release of Mr Gandhi which had the backing of the whole country but at the same time expressed doubt of Government acceding to this demand. Suggested also that an appeal might be addressed to Mr Gandhi to abandon his fast and in this connection further suggested that some of the leaders now present at the conference might make an appeal in person to Mr Gandhi. Dr M.R. Jayakar read out the draft resolution which was subsequently adopted by the conference and which runs as follows:

This Conference representing different creeds, communities and interests in India, gives expression to the universal desire of the people of this country that, in the interest of the future of India and of international good will, Mahatma Gandhi should be released immediately and unconditionally. This Conference views with the gravest concern the serious situation that will arise if the Government fail to take timely action and prevent a catastrophe. This conference, therefore, urges the Government to release Mahatma Gandhi forthwith

Understood that the publication of this resolution in the press had been banned by Government. The demand for the unconditional release of Gandhi was both just and appropriate. Very strongly criticised the Home Member's speech in the Assembly. Was at a loss to understand what was meant by the Home Member stating that Gandhi had lost the rights of citizenship; Gandhi was undoubtedly as good a citizen of India as any one else but might not be a *citizen of I.C.S. circles* or Gymkhana Clubs. In referring to the Home Member said that even though a crow is on the roof of a palace it still remains a crow and does not become an eagle. Described the Home Member as the worst type of Home Member he (the speaker) had ever seen. Described Gandhi as the greatest man in the world. Severely criticised the Defence of India Rules and Ordinances under which India was now governed and earmarked that these rules and Ordinances governed everything except marriages. Supported Sir Tej Bahadur Sapru's suggestion for the appointment of an impartial judicial tribunal. Emphasised that Mr Gandhi's fast was not political blackmailing but a protest against the Government's present policy. Repeated the demand for Gandhi's unconditional release and urged everyone to do their duty in working for the unconditional release of Gandhi. Expressed the hope that wisdom would prevail and that Government would accede to the demand.

Dr Shyama Prasad Mukherji seconded the resolution. Dwelt at length on highhandedness of officials in Bengal of which he had personal experience. In Bengal deliberate oppressions were carried on under the name of Law and Order. Supported Sir Tej Bahadur Sapru's suggestion for the appointment of a judicial tribunal. It would be the greatest imaginable catastrophe if Gandhi's life was not saved. The resolution had been banned and it was quite possible that all supporters of the resolution would be imprisoned and that the speeches now being made would not be possible. If Mr Phillips had come to India to study the situation it was now time for him to act independently. If Mr Gandhi died then his dead body would

for ever lie between England and India and there could be no reconciliation and India would never forgive nor forget. Appealed to Government to act before it was too late.

Sir Maharaj Singh – supported resolution on behalf of all Indian Christians.

Sir Suleiman Qasim Mitha – supported the resolution.

Master Tara Singh – supported the resolution on behalf of all Sikhs. There was not a single Sikh who hesitates to associate himself with this demand. It was ridiculous to suspect Mr Gandhi of encouraging violence. He (the speaker) believed in violence. If the conference took any bold action then he (the speaker) was with them.

Dr Mackenzie – had nothing to do with politics and supported the resolution on humanitarian grounds. Expressed the hope that the release of Gandhi would introduce a new era in relations between Britain and India.

(At this stage Sir Tej Bahadur Sapru read out a letter from Dr Mackenzie supporting the resolution on humanitarian grounds. In this letter Dr Mackenzie had also suggested that a deputation should wait on the Viceroy to secure Mr Gandhi's release; Sir Tej Bahadur Sapru opposed this suggestion and expressed himself against any form of deputation approaching the Viceroy).

Mrs Sarla Devi – supported the resolution.

Mr Allah Eaksh – supported the resolution. It was the biggest possible insult to Gandhi to accuse him of encouraging violence. Accused Government of only desiring a police rule in India.

(Maharaj Kumar of Vijayanagram-supported the resolution. Announced that he (the speaker) had before Christmas despatched a cable to Mr Churchill suggesting the release of all political prisoners and had received a reply from the Viceroy that this suggestion could not be considered. Suggested that Sir Tej Bahadur Sapru and others should march to the American Embassy and tell Mr Phillips to intervene and also tell him that if he failed to intervene then there would be no cordial relations between India and America. Further suggested that from the American Embassy they should march to the Viceroy's House no matter whether they were received or not and no matter whether they were met by bullets).

Sir A.H. Ghaznavi – supported the resolution. The present was no time for the Government to stand on false prestige.

At this stage Sir Tej Bahadur Sapru read out a letter received by Mr Rajagopalachariyar from the Private Secretary to the Viceroy acknowledging the receipt of the draft resolution).

Mr N.M. Joshi – supported the resolution on behalf of the working classes and the All India Trade Union Congress.

(Maulana Ahmed Said (Jamiat-Ul-Ulema-I-Hind, Delhi) – supported the resolution on behalf of the three million Pathans and Khudai Khimnagars of the North West Frontier Province. Four thousand Pathans were rotting in jail without trial and the news was suppressed. Khan Abdul Ghaffar Khan' had been struck down like a common felon, his ribs broken and then he was lodged in jail. They should not be content with making speeches and passing resolutions. They should also devise ways and means of action to arouse the public feeling and to get rid of the alien Government. They should not be led astray by the 'divide and rule' policy of this alien Government. Expressed the belief that Mr Gandhi can bring about Hindu/Muslim unity in India. If Mr Gandhi died then he (the speaker) greatly feared the consequences of the excitement and feelings which would be aroused amongst the Pathans in the North West Frontier Provinces.

Zahir-ud-Din – supported the resolution on behalf of the four crores of Momins.

Mr Ranadive — supported the resolution.

Humayun Kabir (Calcutta) — supported the resolution on behalf of the commercial community. Referred to Mr Churchill's statement that the commercial community and the capitalists were behind the Congress movement and said that this was a matter of pleasure and not of shame.

Pandit H.N. Kunzru — supported the resolution.

(At this stage the resolution was put to the vote and adopted unanimously).

Signed (illegible)

20-2-43

Superintendent of Police, C.I.D. G.H.

1. Doc. No. 21.

21. Ram Krishna Dalmia to the President, leaders conference

File No. 19/6/43 — Home Poll (I)

[NAI]

Dalmia Jain Niwas
New Delhi,
20th February, 1943.

Ram Krishna Dalmia
The President,
The Leaders Conference,
New Delhi

Dear Sir,

Please read out this letter which I am addressing to all leaders of the Conference.

I am writing today to protest not against the action of the Government not releasing Mahatma Gandhi, as we know their attitude, but against the leaders of this conference who have assembled to approach the authorities with a begging bowl for securing Gandhiji's release. Your deliberations here today will serve no other purpose except showing to the outside world that not only Congressmen but also eminent merchants and public men are against the stiff attitude taken by the Government. To my mind it is abject humiliation for Gandhiji and for all Indians to appeal to the Viceroy or the Prime Minister, whose harsh and hardened attitude we already know. It would have been better if we had assembled at Poona instead of at this luxurious capital and begged Gandhiji not to end his life at this juncture as he has no right to do so, having dedicated it to the cause of India and also to that of the world and humanity. This self-immolation — I should not call it death — will add further glory to the life, already so glorious and noble and it is a thousand times better than dying a natural death. The world may get Churchills and Roosevelts but rarely a saint like Gandhiji. The Mahatma has fulfilled his mission, has reviewed and propagated the cult

of non-violence which had disappeared from this land for the time being and the spirit he has kindled will not die out. So I request all of you to compel Gandhiji to give up the fast or let us fast ourselves, not before this Government, but before our great saint and we have got every right to do so as he is our own and let him be compelled to give it up. We have sincere and great love for Mahatmajee but have we done anything more than having undertaken long journeys by rail or by plane to assemble here and to deliver fiery speeches? Are we prepared to take such action as may compel the Government which today are not heeding us, not because they are intoxicated with the victories on the Russian front but because they are conscious of our weakness? Had we been strong in our resolve, the Government themselves would have convened this very conference and would have implored us to prevail upon Gandhiji to his fast. Those assembled here, honourable members and merchant princes, knights, leaders and Seths, many of whom including myself are busy adding to their pile of wealth in one way or other. In such a case, have we got any right to ask the Hon'ble Executive Councillors not to stick to their jobs?

Whatever it may be, if we have real love for our country, regard for our great leader, and solicitude for the generations yet to come, we should take effective action and if we are incapable of that, I would repeat, we should pray Gandhiji to stop this apparent calamity. This reality is not a calamity but a boon which will impart a lesson to the world that there are still men who know how to die, not in the battle field, where instantaneous death is not so painful, but to die by inches, performing penance and suffering tortures of death every moment. This will also open the eyes of those Mussalmans including Mr Jinnah (who is my close friend I have the right to speak strong words to him) who claim to be patriots but have not the courage even to make the slightest sacrifice. If Gandhiji passes away, the gulf of differences between Hindus and Muslims will be further widened. Those who consider that nationalism will be weakened are mistaken. The hope of Pakistan if not vanished away, will be impossible of realization for hundreds of years. Where in the world is a life like Gandhiji's lived and given up as he thinks doing. For him there is no death, and he might have considered if he dies this is a golden opportunity just as Socrates said at the time of taking the cup of poison. About the sincerity of his confidence in non-violence there is no question. If we put our hands on our hearts and look inwards, we will find very few of us are really non-violent, many of us enjoy sabotage.

We may blame the British Government but we have to admit this much that if this conference should have been convened in Germany, Italy, all of us would have been sent either to concentration camps, or might have been shot dead forthwith even in Russia of Stalin. Our intolerance too knows no bounds. None of us doubts the patriotism or the sincerity of Rajajee but we have not, I hope, forgotten how cruelly we had treated him and were not ashamed to show black flags because he had sincerely believed in principles, to which we could not subscribe. At the risk of annoyance of all of you, except a small number who can be counted on fingers' ends, there are very few leaders who really adhere to non-violence but it is not the fault of Gandhiji. It is our fault or that of the bureaucratic Government which has dragged him to the point of death. Now my request is either to take action with a bold heart or please command Gandhiji to stop this calamity. If really we feel that the life of Gandhiji is an asset for us, we had better hand over a blank cheque to Mr Jinnah and let him have a Pakistan to which on principle I am deadly against as I have a dream of seeing one day the abolition of all territorial system, with the various nations of the world welded into one unit, owing allegiance to one flag, using one currency

and ultimately one language. But to solve the present difficulty instead of being ruled by others let us be prepared to be ruled by our brothers who ignorantly treat themselves as a separate entity and let us control three fourths of this land which is not going to be isolated place or to be formed an island. No injustice is possible to the minorities in Pakistan as we too have the minority of Mussalman in the rest of India; if we do not solve the deadlock this way it is possible our quarrel over Pakistan and Akhanda Hindustan will not end even for centuries. I request to be wise and take some effective action. Please do not play *Tamasha* just like a gathering of rats who passed the resolution to bell the cat but who are going to tie it round their her neck.

I request ruling princes, Hindus and Muslims, specially Jam Sahab, who is a friend and a brother to me, to save the life of this unique leader for the good of the princes.

I am sorry for the strong tone of this letter; my heart is weeping and I am not in a frame of mind to judge the propriety of what I have written.

With folded hands, I beg to be excused.

Yours sincerely,

R. Dalmia

1 Enclosure to Doc 20

22: Chief Secretary, Govt. of Punjab to all Deputy Commissioners in the Punjab — (in case Gandhi dies)

Govt. of Punjab-Congress Movement 1943 — File No. 68 (Confl)
[Punjab State Archives]

From

F.C. Bourne, Esquire, C.I.E., I.C.S.,

Chief Secretary to Government, Punjab.

All Deputy Commissioner in the Punjab.

Dated Lahore, the 20th February, 1943.

Sir,

In continuation of my cypher telegram of yesterday's date I am directed to explain that orders passed under Section 144, Cr. P.C., banning meetings 'designed to further Congress objects' should be treated as covering meetings of condolence or mourning in case of Mr Gandhi's death. In any order that is passed all references to Mr Gandhi must be definitely avoided.

2. Should Mr Gandhi die, there can of course be no objection to or interference with spontaneous hartals. Mourning and condolence should be restricted to recognised places of religious worship where gatherings are excluded from the scope of the order.

3. Processions are already forbidden in all important towns under Punjab Government.

Home Department General Notification No. 511-CDSB, dated the 2nd February, 1943, and this order of course remains in force in all circumstances.

I have the honour to be,
Sir,
Your most obedient servant,
Chief Secretary to Government Punjab.

No. Sec/148-52-S.B., dated the 20th February, 1943.

Copy forwarded to all Commissioners of Divisions in the Punjab, for information.

Chief Secretary to Government Punjab.

No. Sec/153-88-S.B., dated the 20th February, 1943.

Copy forwarded for information to:

1. All Range Deputy Inspectors General of Police, and
2. All Superintendents of Police in the Punjab.

For Deputy Inspector General of Police,
Criminal Investigation Department.

Enclosure

From
F.C. Bourne, Esquire, C.I.E., I.C.S.,
Chief Secretary to Government, Punjab.

To
All Deputy Commissioners in the Punjab.

No. 3432-60 – B.D.S.B., Lahore, dated the 19th February, 1943.

Sir,

I have the honour to append herewith a paraphrase of cipher telegram No. 315-344-B.S.B., dated the 19th February, 1943 sent to all Deputy Commissioners in the Punjab today:

In view of the possible consequences of M. Gandhi's fast, the Punjab Government consider that Deputy Commissioners and Superintendents of police should remain at headquarters. In all important towns, it is desirable that public meetings intended to further Congress objects and thus to disturb public tranquility (other than religious gatherings in recognised places of worship) should be banned by orders under section 144 Cr. P.C. for one month. In these orders, no reference should be made to M. Gandhi's fast.

I have the honour to be,
Sir,
Your most obedient servant,
For Chief Secretary to Government, Punjab.

No. 3461-65 — B.D.S.B., Lahore, dated the 19th February, 1943.

Copy forwarded to Commissioners of all Divisions in the Punjab, for information.

For Chief Secretary to Government, Punjab.

No. 3466-3501-B.D.S.B., Lahore, date the 19th February, 1943.

Copy forwarded, for information to:

1. All Range Deputy Inspectors-General of Police, Punjab, and
2. All Superintendents of Police in the Punjab.

For Deputy Inspector-General of Police
C.I.D. Punjab

Whereas, it is desirable that all public meeting intended to further CONGRESS objects and thus to disturb public tranquility (other than religious gatherings in recognised places of worship) should be banned, I, A.K. MALIK, I C.S., DISTRICT MAGISTRATE, AMBALA, do hereby order under Section 144 CRIMINAL PROCEDURE CODE, that all such meetings shall be banned for period of one month from the date of this order.

A.K. Malik
District Magistrate,
Ambala

Copy to:

- 1 The Superintendent of Police, Ambala. 21/2/1943.
- 2 All Ilāqa Magistrates.
- 3 All Tahsildars, in the district for information and wide publicity.
- 4 The Chief Secretary Government, Punjab for information.

District Magistrate
Ambala.
21/2/1943

23: Editorial in *Independent India* dated 21.2.1943

Independent India — Vol. 7, No. 8
[NMML]

The Show-down

STRONG words have been exchanged between fallen out friends. The Mahatma's epistles to the Viceroy are remarkable documents. His patience is exhausted, and he has taken his old friend to task. Six months of detention in a palace, with all worldly comforts what an

injustice to an innocent man: Feeling very strongly about this injustice, the Mahatma invoked the mysterious law, known only to himself, and enjoined the Viceroy to make amends. The first epistle from the palatial prison was rather vague. The Viceroy, therefore, could not reply except with platitudes, and requested for a more explicit communication. That was the desired opening which enabled the Mahatma to make the pre-conceived move. It was a threat to fast – not unto death, but to capacity. The Mahatma declared that he was going to fast as an appeal to the highest tribunal. Everyone may not believe in the efficacy of such appeal. But nobody should grudge if others entertain the belief even in this twentieth century. The fast, however, is not a divine pastime. It has a mundane political purpose. The Mahatma did not make any secret about it. He was tired of the comforts of imprisonment and anxious to return to the rough and tumble of politics. Therefore he demanded unconditional release, although he carefully omitted to say exactly what he was going to do to end the 'impasse'.

Patience seems to have been exhausted on both sides. Already in his second letter, the Viceroy wrote something which the offended friend presumably did not expect. The Viceroy characterized the threatened fast as a political blackmail, although he conceded to the Mahatma the freedom to practise it if he wished. After that, there was no choice for the latter, and the fast began with all the well known ceremonies and formalities. As was to be expected, everything else in the public life of the country has been eclipsed by the stage-managed clamour for the release of the Mahatma. Curiously enough, it is ignored that during his fast the Mahatma is a free man. The palace has ceased to be a prison even nominally. If the Mahatma is really tired of the comforts of imprisonment, he is free to betake himself anywhere else. That being the fact, all this uproar about his release is altogether pointless. The demand is to allow the Mahatma all the freedom to do whatever he pleases in order to end the impasse in his own way. On humanitarian grounds, everybody would join the cry of agony that the Mahatma should not be allowed to die. But the contention that the key to the India problem is in his hand may be disputed. In any case, it is pertinent to ask how does he propose to set about the task of ending the impasse. He has kept his own counsel. Therefore, all this uproar will only make the confusion worse confounded.

Until now the Government has kept its nerves and refused to be stampeded. Having condemned the Mahatmaic technique of whipping up popular sentiment and attracting world opinion as political blackmail, the Government has left no way open for retreat. But to stand pat will not be a wise policy. The Mahatma's fast is not an isolated event. It is part of a well laid plan, which is to shift the position of the Congress so that the Government may be deprived of all valid argument for not transferring formal power to a National Government controlled by the industrial and commercial interests which have been riding the two horses of making money out of the war and financing the movement for sabotaging war efforts. This is a grand conspiracy rather against the future of India than against the present Government, which willy-nilly has joined the conspiracy, for all practical purposes. That very significant fact causes misgivings about what the Government will do if the artificially created commotion over the Mahatma's fast aggravates into a popular outburst.

The much trumpeted 'Leaders, Conference' is meant to create the impression that the whole of political India stands behind the Mahatmic manoeuvre. That, however, is not the case. This time the Leaders Conference cannot claim to have the support even of the major political parties, or even of Hindu India. Not only Mr Jinnah has refused to attend the conference, but the Hindu Mahasabha also has condemned that fast in unmistakable terms. It has gone even farther, and has refused to be a party to any settlement between the Congress

and the Muslim League. That being the case, the Government, in spite of its weak-kneed policy in the past, to-day finds itself in a strategically strong position. It can take the fire out of the guns of the prominent leaders meeting at Delhi by challenging their right to speak in behalf of the Indian people. But in order to be effective, that challenge must be backed up by a long-term policy and positive action. To begin with, it must set its house in order. Parties to the political blackmail, publicly condemned by the head of the Government, having secret confabulations with members of the Government that only betrays a dangerous weakness, which results from the absence of homogeneity and unity of purpose. The situation becomes positively ludicrous when a member of the Government declares his intention to attend the conference held with the purpose of forcing the Government to give in to the political blackmail. The internal rot must be cured if the Government is to weather the brewing storm.

Simultaneously, the Government must be reinforced by really democratizing itself with the co-operation of those who have refused to be parties to the political blackmail. Given the attitude of the Muslim League and the Hindu Mahasaba, they evidently constitute the overwhelming majority of the Indian people. A Government constituted on that basis will certainly meet the demand for a National Government. But the decisive factor will be not the personal composition of the Government but the policy it will pursue. In that connection, the present Government can take the initiative and thereby justify its policy of resisting political blackmail. present and past, not only before world opinion, but also before the Indian people at large. It should be a policy of promoting popular welfare and creating conditions which will enable Indian Democracy to assert the right of self-determination at the earliest available opportunity.

Otherwise the new strategy of the Congress may succeed in outmaneuvering the Government and compelling it to betray its responsibility to the Indian people as well as to British Democracy. The new strategy of the Congress is determined by two factors: One internal, and another external. The failure of the movement envisaged in the resolution of the Bombay A.I.C.C. meeting, and precipitated perhaps somewhat prematurely by the arrest of the Congress leaders, has placed the Congress in a very awkward position. Therefore, the Mahatma seems to be once again feeling the necessity of doing something desperate in order to save the Congress from extinction. On the other hand, the definite turn of the war must compel the Congress leaders to revise their attitude and readjust their policy. Formerly, the policy was determined by the belief that Britain was going to be defeated, whatever might be other results of the war. That belief was not based on any realistic analysis of the relation of international forces. It was rather a matter of wishful thinking. And as such, it may not disappear very easily. Nevertheless, solid facts are now challenging that belief, and those who have been building castles in the air, must now reconcile themselves to the new perspective.

Under the given situation, no useful purpose will be served by the Congress leaders continuing their quarrel with the Government. Therefore, the Mahatma held out the olive branch, hoping that the Government would welcome it with relief, and consequently the Congress will come out of its heavy defeat with the flying colours of a fraudulent victory. But bitter experience has taught the Government the futility of the policy of appeasement which nearly ruined the country. The olive branch having failed to elicit the desired response, the Mahatma fell back on his non-violent pistol, which for once does not seem to have terrified the Government into submission.

If the peace overtures of the Mahatma were purely a matter of inner light (although he has not referred to that source of divine inspiration on this occasion), then it was not necessary for him to torment himself with six months patience. This time he opens the gambit by

referring to his mission which came to him as far back as 1906, and with which mission he claims to have returned to India. It is a mission of preaching truth and non-violence to a world full of falsehood and violence. Again one cannot help asking: Why did he keep his mission in suspense for half a year? On a previous occasion, we compared the Mahatma with the legendary Doctor Caligari, whose black magic used to kill the souls of people whose physical ailments he used to cure. Although reason seems to be dawning in some quarters, the world still remains entrapped in Doctor Caligari's cabinet. Therefore, the Mahatma may succeed one again. In order to prevent the obvious issues of Indian politics being confused by black magic, it is necessary to lay emphasis on facts which, though well known, are likely to be overlooked by men under a spell. The fact is that events in India as well as abroad taking place during the last six months must have convinced the Congress leaders of the futility of their war policy and made them look out for an opportunity to change their attitude in order to save their organisation. The Mahatma raised his voice of protest against the injustice of having put him inside the walls of a palace, only when he felt that neither was the Government going to atone voluntarily for the sin, nor would the forces of evil let loose by the order of the Congress and at least on the authority of the Mahatma himself, throw open the doors of the prisons in which the Congress leaders are kept. It might have been patience on the part of the Mahatma, but the Congress leaders, his lieutenants, did not wait with patience, but with great expectations. Those expectations are no longer there. They must adjust themselves to a new situation. The initiative was taken by their spiritual guide. Thus, even those who would not like to use the strong term political black magic could not characterize the Mahatma's fast otherwise than as a political gamble. He is gambling with his life. His lieutenants would not allow him to do so if they did not realise that their position was desperate.

Is it really necessary for the freedom of India and the welfare of the Indian people, not to mention the cause of the United Nations, to help out a group of bankrupt politicians, who became bankrupt because they gambled with the future of the country which had placed its confidence in them? In so far as the object of the prominent leaders without following, who are meeting at Delhi, is to save the life of an old man, their efforts can have the sympathy and support even of those for whom he is not a Mahatma. That object could be easily attained if it were separated from political manoeuvring. On that condition the Government could be persuaded to withdraw from the Mahatma the privilege of being detained in a palace and give him the freedom of living wherever he likes as a private citizen. But it is clear from the Mahatma's correspondence that he wants unconditional release with the object of proving that the Congress was not responsible for what happened in the country during the last six months. Why is he so anxious to do that? If he really did not approve of those events, he could have expressed his disapproval when they were actually taking place, endangering the country seriously. No useful purpose will be served by post facto disapproval, even if it is assumed that the events were not actually promoted or approved by the Congress leaders. It is too late to maintain that the Congress as an organisation had nothing to do with those events. The evidence against any such contentions is overwhelming. Therefore, the only object of the Mahatma in his latest political gambit is to get hold of credulous ears and whisper in them: I am sorry for what happened in the past; now let us forget and forgive, and be friends again. That is clear from the tone of his first letter to the Viceroy. The reply seems to have encouraged him. He was happy to feel that he had not 'lost caste' in the Viceregal Lodge. Confident of success, he immediately laid all cards on the table expecting that the Viceroy will also do the same. But experience has made the latter wiser.

He was not in a hurry to walk in Dr Caligari's Cabinet. Impatient to have his own way soon, the Mahatma rattled his non-violent sabre, only to be called a political blackmailer, to his utter chagrin. It was not at all necessary for the Mahatma to gamble with his life. The Viceroy was ready to meet him more than half-way. The only thing that the Mahatma had to do was to inform the Viceroy that he was prepared to go back on the Bombay resolution and to advise the Congress Working Committee to do so. Those who advocated a settlement between the Government and the Congress, while the latter admittedly in open rebellion, did so with the argument that every war ends in peace. In that token repudiation of the Bombay resolution is a precondition for the Congress leaders being invited by the Government to a peace conference. Instead of doing that obviously reasonable thing, the Mahatma preferred to go on fast, evidently with the object of forcing the hands of the Government. That being the case, it is very difficult to see what the Government can do to oblige the prominent leaders meeting at Delhi. Even if the Mahatma is released purely on humanitarian grounds, and all restriction on his personal movements is removed, peace talks cannot possibly begin so long as the state of warfare continues.

It is not possible to believe that the Congress leaders and their advocates do not see the contradiction of this position. They are evidently trying to exploit popular sentiment, agitated by the Mahatma's fast, for bringing about a new political crisis. The plan may include eventual resignation or perhaps dismissal of some members of the Viceroy's Council. If the report about the strange behaviour of some of those gentlemen is true, and if they continue fraternization with declared rebels, the Viceroy be compelled to speak to them as frankly as he did to the Mahatma, and that may give them the occasion for resigning in protest against autocracy. The demand for the release of other Congress leaders is implied in the demand for an unconditional release of the Mahatma on political grounds. The Government will presumably insist upon a clear declaration of a change of Congress attitude before fulfilling that demand. Thus, the situation is heading towards a showdown. If the Government retains its present strong attitude, the Congress is bound to be ruined by its own foolish for India. As a matter of fact, that will create conditions for a realignment of political forces, giving a chance to Indian Democracy to assert itself on the situation and shape the destiny of the country.

The day after this was written came the news of the resignations of Mr Aney, Sir H.P. Modi and Sir Nalini Ranjan Sarkar from the Viceroy's Executive Council and of their acceptance by the Viceroy.

24: W.H.J. Christie to K.M. Munshi

Jayakar Collection - File No. 527
[NAI]

The Viceroy's House,
New Delhi, 22nd February, 1943.

Dear Mr Munshi,

His Excellency the Viceroy desires me to acknowledge with many thanks your courtesy in

sending him a copy of the telegram which the Committee of the Leaders Conference have decided to cable to London.

Yours sincerely,

W.H.J. Christie,

K.M. Munshi, Esq.,

Copy of the telegram

Three hundred public men from different parts of India, representing various communities, creeds and interests including Commerce and Industry, Landed Interests, Workers, Communists, Hindus, Muslims, Christians, Sikhs, Parsis and British Missionaries, met yesterday at New Delhi and unanimously passed a resolution urging immediate and unconditional release of Mahatma Gandhi whose condition is fast approaching a crisis. We fear that unless immediately released he will pass away. We wish to explain to British public opinion that the Mahatma is fasting only to be able to review the situation as a free man and to advise the people accordingly and not on the issue of independence. We are convinced that the terms of his letter of September 23 recently published by the Government amount to an unequivocal disapproval on behalf of himself and the Congress of all acts of violence. The Chairman of the Conference, Sir Tej Bahadur Sapru, submitted the resolution to the Viceroy yesterday afternoon and immediately afterwards he received a reply from the Viceroy declining to interfere as no new factor had arisen to alter the previous decision and enclosing the official communication of February 10. We deeply deplore that the advice of so many representative and responsible men should have been summarily turned down by the Viceroy.

We firmly believe that if the Mahatma's life is spared a way will be opened to the promotion of peace and goodwill as surely as his death as a British prisoner will intensify public embitterment. The charges brought by the Government against the Mahatma do not rest upon an examination by any impartial Tribunal or independent body of men. We firmly believe that much of the trouble which has arisen was preventable by timely action on the part of the Government last summer and that the Mahatma should have been allowed to see the Viceroy to find a solution as he desired.

Millions of our countrymen feel that the responsibility for saving the Mahatma's life now rests only with the Government. We, therefore, urge that the Mahatma should be forthwith released. As under the existing constitution the ultimate responsibility is of the British Parliament for the peace and tranquility of India, We request that this cable may be brought to its notice in order that it may do justice in the matter. We are convinced that wise and liberal statesmanship will solve the Indo-British problem more speedily and effectively than stern repression.

Signed

Right Honourable

Sir Tej Bahadur Sapru

C. Rajagopalachariar

Allah Buksh

N.C. Chatterjee

Sir Abdul Halim Ghuznavi

Ex-Law Member, Government of India:

Ex-Prime Minister, Madras;

Ex-Premier, Sind, President, Azad Muslim Conference.

Working President, Bengal Hindu Mahasabha;

Member, Central Legislative Assembly, President, Central National Mahomedan Association of India.

| | |
|---------------------------|---|
| Mrs Saraladevi Chaudhuri | President, Women's Hindu-Muslim Unity Committee, and General Secretary Indian Women's Association; |
| Dr Ashraf | Socialist; |
| Dr Shaukatullah Ansari, | General Secretary, All-India Independent Muslim Parties Federation. |
| B.T. Ranadive | Central Committee, Communist Party of India. |
| S.P. Mookerjee | Working President, All-India Hindu Mahasabha and Ex-Finance Minister, Bengal. |
| Dr B.S. Moonje | General Secretary, All-India Hindu Mahasabha; |
| Raja Maheshwar Dayal Seth | Ex-Minister, United Provinces, and President, Oudh Hindu Sabha. |
| Bhulabhai J. Desai | Leader of Opposition, Central Legislative Assembly; |
| P.N. Banerjee | Leader, Nationalist Party, Central Legislative Assembly; |
| H.N. Kunzru | Deputy Leader, Progressive Party, Member Council of State, and President, Servants of India Society; |
| Mrs Hannah Sen | Vice-President, All-India Women's Conference; |
| P. Subbarayan | Member, All-India Congress Committee and Ex-Minister for law, Madras; |
| J.R.D. Tata | Chairman, Tata Sons; |
| N.M. Joshi | Member Central Legislative Assembly, and General Secretary, All-India Trade Union Congress; |
| Sir Ardesir P. Dalal | Managing Director, Tata Iron and Steel Co; |
| Sachidananda Sinha | Vice-Chancellor, Patna University; |
| G.L. Mehta | President, Federation of Indian Chambers of Commerce and Industry; |
| Kiran Shankar Roy | Member, Bengal Legislative Assembly; |
| Mohammad Ahmad Kazmi | Member Central Legislative Assembly; |
| Sewa Singh Gill | Zaminder; |
| Humayun Kabir | Vice-President, Krishak Praja Parliamentary Party, and Secretary, Hindu-Muslim Unity Association |
| Right Honourable | |
| Doctor M.R. Jayakar | Ex-Judge, Judicial Committee, Privy Council; |
| K M. Munshi | Ex-Home Minister, Bombay; and |
| Sir Jagdish Prasad | Ex-Member, Viceroy's Executive Council. |

London, February 22.

The Government of India decided last August that Mr Gandhi and other leaders of the Congress must be detained for reasons which have been fully explained and are well understood. The reasons for that decision have not ceased to exist and His Majesty's Government endorse the determination of the Government of India not to be deflected from their duty towards the people of India and of the United Nations by Mr Gandhi's attempt to secure his unconditional release by fasting.

The first duty of the Government of India and of His Majesty's Government is to defend the soil of India from invasion by which it is still menaced, and to enable India to play her part in the general cause of the United Nations.

There can be no justification for discriminating between Mr Gandhi and other Congress leaders. The responsibility therefore resting entirely with Mr Gandhi himself.

25: Report on Gandhi's fast in *Daily Worker* (dt 22.2.1943)

Daily Worker (London)
[NAI – MF Acc. No. 2430]

Gandhi's Life Danger

If the fast is not ended without delay, it may be too late to save Mr Gandhi's life, stated the Bombay Government's communique on the Indian leader's condition yesterday, says Reuter.

Indian students in Oxford are fasting in sympathy for Gandhi. During Mr Amery's recent visit to Oxford, a telegram demanding his unconditional release was sent to him from the Indian Students Union.

Mr William Phillips President Roosevelt's personal envoy in India declared in a statement issued yesterday.

'Phases of the situation in India requiring discussion are being handled by officials of the Governments of the United States and Great Britain'.

The statement was handed to correspondents without further comment. But was assumed that the 'situation' mentioned in the statement had a definite reference to that created by Mr Gandhi's fast.

26: Telegram from the Governor of CP & Berar

Lanlithgow Collection
[NAI – MF Acc. No. 2243]

Governor of the Central Provinces and Berar to Viceroy (12-1-42).

Telegram R.

22nd February 1943.

Most immediate. Mo.447-M.S. Referring to our conversation at my last interview at Delhi your Excellency will have seen press message containing Doctor Khare's reply to invitation to attend Leaders conference. Message was mutilated but regrets inability to attend and contains sentence which should read 'no faith method fasting in politics'. I have just (seen?) Khare and asked him to elucidate his position. Whatever happens he promises 'absolute support' to Government and indicates that this support is entirely consistent with his attitude towards the war and towards Gandhi's fast generally. He refers to his open letter to Gandhi about April 20th, 1939, condemning fast staged by Gandhi on eve of Tripuri, Central Provinces National Congress Meeting in connection with Rajkot affairs which Khare discussed as a dodge to

dishearten the then President Subhas Bose. He also refers to lecture delivered by him at Poona on May 18th 1939, in which he again condemned fast with reference to Gandhi's admission on May 17th that there was an element of coercion in fast and that he has harboured ill-feeling against some of his co-workers in politics.

Khare has undoubtedly courage of his convictions and is not afraid of Gandhi. He may shed some crocodile tears in a certain event but his 'absolute support' can be relied on although it must be admitted that he may be open to accusation of personal bias in view of his resentment at the way in which he was treated by Congress High Command in July 1938.

27: Report on Gandhi's health in *Daily Worker* (dt 23.2.1943)

Daily Worker (London)

[NAI - MF Acc. No. 2430]

After restless day yesterday, Mr Gandhi entered a crisis at 4 p.m. He was seized with severe nausea and almost fainted and the pulse became nearly imperceptible', said the Bombay Government communique yesterday.

'Later he was able to take water with sweet lime juice. The heart is weaker'. He rallied from the crisis and slept for about 5-1/2 hours, well into the night. Today is his day of silence

'He appears to be comfortable and is more cheerful. The heart is weaker. The report was signed by six doctors.

Indian political leaders meeting under Sir Tej Saprú, the Liberal Leader, have decided to cable Mr Churchill in a last minute effort to secure Mr Gandhi's immediate and unconditional

28: Governor of Central Provinces & Berar to the Viceroy

Linlithgow Collection

[NAI - MF Acc. No. 2200]

From H.E. Sir Henry Twynam, K.C.S.I., C.I.E. Governor of the Central Provinces and Berar.

(Secret)

Camp, February 23rd/24th 1943.

No. R-133-G.C.P.

Dear Lord Linlithgow,

My visit to Delhi and conversations with Your Excellency have to some extent filled the gap in our correspondence since I last wrote on the 20th January 1943,¹ and much which is

contained in my two last letters is now devoid of interest, every other subject being pushed into the background in view of the situation arising from Gandhi's precarious position.

2. In the more important areas in this province an order under Defence Rule 56 prohibiting processions, meetings etc., is already in force. In the event of Gandhi's death I intend to issue immediately a Gazette Extraordinary applying Defence Rule 56 throughout the province, subject however to the important provision that District Magistrates will have authority to relax the order at their discretion. We are communicating to them separately our views which are that meeting which are condolence meetings pure and simple may be allowed provided ordinarily that they are held within buildings or private enclosures and not in public places where they may act as incitements to disorderly elements to repeat the disorders of August last. Processions will not be allowed under any circumstances. I am not prepared to take any risk in this matter in view of the fact that the latitude allowed on the 9th and 10th August last, on the theory that it was desirable to permit the letting off of steam, was taken immediate advantage of by students, Left Wing Congressman including the Hindustan Red Army, hooligans and other disorderly elements, and was quite useless as a measure of pacification.

If disorders are attempted, I can assure Your Excellency that we shall hit back immediately with considerably greater force than in August last and with the experience then gained so that I do not feel the slightest uneasiness about our ability to cope with any situation.

3. We may expect a wholly unfriendly press because even the Maharashtrian vernacular newspaper which commands the largest circulation in this Province will probably feel compelled to shed crocodile tears in the event of Gandhi's death although, as Your Excellency is well aware there is little love lost between Marathas and Gujratis. Our local press however is so insignificant and so low in the scale of journalistic values that its activities present no difficulties and suitable medicine will be dispensed to those organs requiring it.

4. I sent Your Excellency yesterday a telegram regarding Dr Khare for whom my respect has greatly increased owing to the bold stand which he has dared to take in refusing to attend the so-called Leaders Conference and his public assertion that he has no faith in fasting in politics. Once again, that rare honesty of character which has long been recorded as a characteristic of Marathas and Marathi speaking Brahmins and which was evident in Aney, has shown itself in Dr Khare.

5. As I write, the issue of Gandhi's life or death is the dominant one. I imagine that Your Excellency is being subject to pressure from every possible quarter on this issue which is clearly one which is to be included among the axioms of politics, as Dr Khare sees. The entire body of the Hindu intelligentsia has of course completely lost its head but I have as yet no evidence that the mass of the people in this Province are taking any interest at all in the matter.

[Omitted: Rest of Paragraph 5 till paragraph 7, which dealt with questions of provincial administration omitted-part of it is in Chapter I (B) Doc. 21 -- Ed.]

Yours sincerely,

H.J. Twynam.

P.S. — Since writing the above, I have seen later reports. These indicate that while Gandhi's fast is generally recognised as a political manoeuvre and has as yet created little or no excitement in the countryside, anxiety regarding his health is felt in the towns. Yesterday (23rd) the mills were on strike and there was pretty general hartal but both the strike and the hartal appear

to have been called off today. It is curious that the Deputy Commissioner, Wardha, reports that no anxiety over the Mahatma's ability to withstand the fast is felt there.

(40 (7) - (G.G. - 43).

1 Part of the letter in Chapter I (B) Doc. No. 21

29: News item in *Daily Worker* (dt 24.2.1943)

Daily Worker (London)

[NAI - MF Acc. No. 2430]

If Gandhi dies during his fast irreparable harm will be done to Britain in the eyes of the freedom-loving peoples.

No less than the future relations of the British peoples and the 400 millions of India hang on the thin thread of his life.

Mr GANDHI had only broken sleep during night but dozed off and on during the day. This is the latest communique on the health of the 73 years old Indian leader after the completion of two-thirds of his fast for 21 days.

In Britain the Government is standing pat. It refuses to order Gandhi's release or make any move to settlement and complacently awaits consequences that no one can foresee.

In India - and among Indian communities all over the world-millions are urging and praying for Gandhi's release for a gesture of conciliation from the British rulers. One-third of the members of the Viceroy's Governing Council have resigned in protest.

Students of the Cambridge University India Society have begun a fast in sympathy and have sent telegrams urging release to Mr Churchill and Mr Winant.

Telegrams have been sent to the India Office from the South Midlands, Lancashire, Leeside, Nottingham, Devon and Cornwall districts of the Communist party.

The Committee of the Eastern and District Trades Council near Middlesbrough, yesterday wired Mr Amery on behalf of 7,000 workers calling for the immediate release of Mr Gandhi.

30: News item in *Daily worker* (dt 25.2.1943)

Daily Worker (London)

[NAI - MF Acc. No. 2430]

Release Gandhi - Call from U.S., Ceylon, Britain

As Mr Gandhi enters the third week of his fast, with no appreciable change in his condition, the Liberal leader, Sir Tej Sapru, has received a letter from Mr Churchill reiterating that the responsibility for the fast rests entirely with Gandhi himself.

'The Government of India decided last August that Mr Gandhi and other leaders of the Congress Party must be detained for reasons which have been fully explained and are well understood', the letter stated.

'H.M. Government endorse the determination of the Government of India not to be deflected from their duty towards the peoples of India and of the United Nations by Mr Gandhi's attempt to secure his unconditional release by fasting', it added.

The letter was sent in reply to a resolution from the committee of the Indian leaders conference attended by distinguished Indians representative of all walks of life and Indian political and social organisations.

The resolutions expressed the conference's firm belief that 'if the Mahatma's life is spared a way may be opened to the promotion of peace and good will as surely as his death as a British prisoner will intensify public embitterment'.

In the meantime, disquiet is growing in all countries. The Ceylon State Council passed a resolution by 37 votes to 4 expressing concern over the fast and requesting the British Government to release Gandhi immediately.

In Washington pickets carrying 'Release Gandhi' placards demonstrated outside the British Embassy until they were removed by the police.

Birmingham. Engineering No. 1 branch of the clerical and administrative workers union have passed a resolution calling for the immediate release of all Indian leaders and re opening of negotiations, which they have sent to 12 Birmingham Members of Parliament (including Mr Amery) and to the Viceroy of India.

In a Committee Room meeting in the House of Commons on Tuesday a number of M.P.S. and their friends were addressed by Miss Agatha Harrison and V.K. Krishna Menon, and passed a unanimous resolution demanding the release of Gandhi.

31: Report on Gandhi's fast in *Daily Worker* (dt 26.2.1943)

Daily Worker (London)

[NAI – MF Acc. No. 2430]

MPs disturbed about India – and Gandhi

(From Gerald F. Wolfson),

(*Daily Worker* Parliamentary Correspondent)

While yesterday Bombay Government on Mr Gandhi's condition said that he had made no further progress and 'there was no appreciable change in his condition', there was considerable anxiety and a great deal of protest by many Members of Parliament yesterday at the position in India.

They were particularly anxious regarding Mr Gandhi's fast and at the unsatisfactory replies given by Mr Amery, Secretary of State for India.

Replying to a question by Mr Sorensen (L. Leyton, West), Mr Amery said the circumstances in which the Government of India found it necessary to detain the Indian Congress leader

were well known and the correspondence between Gandhi and the Viceroy had been published.

It contained no indication that Mr Gandhi saw cause for regret at the outbursts of murder, violence and sabotage which followed the authorization in August last by the Congress Party of the mass struggle, said Mr Amery.

Mr Sorensen asked: In view of the concern in the House and the country for the release of Gandhi, and the expression by non-Congress leaders, could the Minister arrange for a debate at an early opportunity?

There were conservative cries of 'No'. Mr Amery replied that was a matter for the leader of the House.

Asked by Mr Shinwell (L. Seaham) whether he could produce evidence that Mr Gandhi was responsible for the outbreaks of violence, Mr Amery said a good deal of matter had been produced and fuller matter was coming from India and would be made public.

Mr Kirkwood (L. Dumbarton) pointed out that the release of Gandhi had been suggested as being a sign of weakness, but to release Gandhi would be an indication of our strength that we could afford to be generous.

The Tnpe and Blyth district Committee of the *A.E.U.* passed a resolution calling for the release of Gandhi.

Telegrams have also been sent to the Viceroy, Amery, Churchill and Roosevelt by the Newcastle-on-Tyne Hindustani Society, which represents all sections of the Indian community in the Newcastle district.

The North East and the Hants and Dorset district committee of the Communist Party urge the 'immediate release of Gandhi to avoid irreparable damage to United Nations cause'.

32: Report in the Indian situation in *Daily Worker* (dt 26.2.1943)

Daily Worker (London)

[NAI - MF Acc. No. 2430]

Indian Situation Deplorable

Daily Worker Reporter

'The situation in India is deplorable to us and I hope the British Government will find a satisfactory solution to it'.

That was the reply of General Siung Shihh-bui, head of the Chinese Military Mission to the USA when I asked him in London yesterday what use Japan is making of the Indian deadlock in her propaganda and what China thinks about it.

At a Press Conference, the General said that the Japanese propaganda in the occupied territories was an important factor. They used slogans such as 'Asia for the Asiatic' and 'Liberation of enslaved territories'.

Asked about the declarations by the United Nations on freedom and independence of subject populations, he said these were very good, but 'it is upto us to put them into practice. Some of them can be accomplished now'.

The General pointed out that Japan now hold better strategic position than the United

Nations for Naval attack and defence, and unsinkable air bases, and her strength in resources, manpower and finance are growing.

The Chinese Air Force, he said had declined until now she had few aircraft. But there was enough trained personnel to man planes if they could be obtained.

As a preliminary and most important step toward defeating Japan the leading United Nations should come together and discuss a common plan.

Asked whether he was satisfied with his mission to Washington, he replied 'before final victory is achieved, nothing is satisfactory'.

The General will see Members of the British Cabinet and examine Britain's military effort before he returns to Chungking.

33: Report on Gandhi's fast in *Daily Worker* (dt 27.2.1943)

Daily Worker (London)

[NAL - MF Acc No. 2430]

Gandhi – Health Unchanged

Yesterday's Bombay Government communique on Mr Gandhi's condition states: 'There is no appreciable change in Mr Gandhi's condition. He is cheerful.

Mr N.R. Sarker, who resigned recently from the Viceroy's Executive Council owing to a disagreement with the Government over the release of Gandhi, said yesterday that he prayed that Gandhi might 'yet live for many years to serve the country's cause'.

After criticising 'the political technique for winning national freedom', Mr Sarker appealed to the British Government to 'take a realistic and helpful attitude towards solving the present deadlock'

34: Report on Gandhi's fast in *The Times of India* (dt 1.3.1943)

Jayakar Collection – File No. 527

[NAL]

Mr Gandhi Alert and in Good Spirits

Poona Feb. 28 – Mr Gandhi, though still weak after 19 foodless days, is reported to have been more cheerful and bright in his conversation today than at any time before during his present fast.

Today he had his first shave after a lapse of 19 days. One of the visiting doctors attending on him regularly officiated as his barber. The beard which he grew since launching on his fast was removed and his moustache neatly trimmed. Mr Gandhi is said to have confided to a new feeling after shedding his beard.

Since launching on his fast, Mr Gandhi is reported to have been spending long hours in meditation.

Today Mr Gandhi received an unusually large number of visitors including Mr C. Rajagopalachari.

With only two more days to complete his 21 days fast, Mr Gandhi is reported to have told his friends that his confidence to pull through the fast remained unshaken. It is now believed, adds the United Press, that the last critical phase of the fast which threatened to affect his condition on Saturday, is now over and that there is no further apprehensions of its recurrence during the next two days.

The usual four minute limit placed on visitors interviewing Mr Gandhi was raised in the case of Mr M.S. Aney, former Member of the Viceroy's Executive Council, who had a fairly long talk with Mr Gandhi at the Aga Khan Palace on Saturday. The conversation was purely a personal one and it is understood that political questions were not discussed. Mr Aney is likely to call on Mr Gandhi again in the next few days.

Mr C. Rajagopalachari also called on Mr Gandhi on Saturday afternoon. Later Mr Aney called on Mr Rajagopalachari and had a brief conversation with him.

'Mr Gandhi's general condition shows improvement. He is alert and in good spirits', states a communique issued by the Bombay Government on Sunday evening on the health of Mr Gandhi upto Sunday afternoon. The report is signed by Dr B.C. Roy, Major-General R.H. Candy, Dr M.D.D. Gilder, Miss S. Nayar, Lt. Col M.G. Bhandari, and Lt. Col. B.Z. Shah.

During his 20 minutes stay at the Aga Khan Palace Mr Aney met Mrs Sarojini Naidu, Mrs Kasturba Gandhi and other inmates of the palace, states the United Press. The same news agency has learnt that Mr Aney has decided to stay at Poona till the termination of the fast and intends to see Mr Gandhi frequently. For this purpose Mr Aney has requested the Inspector-General of Prisons for the necessary permission.

Mr Rajagopalachari, it appears, has secured Government's permission to meet Mr Gandhi as often as possible.

35: Devadas Gandhi on his visit to Gandhiji in jail

Jayakar Collection - File No. 527

[NAI]

'LEGENDS'

(dt 6.3.43)

My brother and I paid our good-bye visit to Gandhiji on Saturday the 6th. We had been spending about an hour and a half by his bedside each day since the end of the fast. The widely published report that I spent a few hours with Gandhiji on Friday is totally incorrect. I wish it has been possible to visit him for a few more days during his convalescence, more particularly because the visits were a great comfort to my mother, whose growing infirmity of mind and body had become painful and alarming to watch.

I think Gandhiji is now well on the way to recovery. He is expected to take another fortnight

to be able to get out of bed. But one is thankful now to be able to look back with relief upon these four weeks of history. I do not wish to attempt a public assessment of the results of the fast. I am content, along with the rest, to let the future unfold itself.

But there are a good few legends. I shall here refer to two of them. It has been reported in the Press that Gandhiji had a heavy mail-bag during the fast. Actually no mail-bag heavy or light, made its appearance at the Aga Khan's Palace. They will only reach him in due course, if at all, as he is still a prisoner. Then there is the Sweet lime juice story I do not exactly know the fruit called sweet lime.

But a foreign correspondent very naturally asked me whether he would be right in drawing the inference that something sweet like honey or glucose had been added to the juice. To my knowledge the plain word orange is used in English to mean both mosambi and santra. And it was mosambi juice, miscalled sweet lime juice, that was added in minute quantities to the water with no admixture of anything else. The change from Lemon Juice to orange juice was made in accordance with the terms of the fast, when for two days it had become impossible for Gandhiji to drink water and it took him five minutes to gulp one ounce of water. I believe he took an average of less than six ounces of juice mixed in 60 ounces of water per day during the fast.

Devadas Gandhi:

36: Governor of CP & Berar to the Viceroy Gandhiji's fast

Linlithgow Collection

[NAI – MF Acc. No. 2200]

From H.R. Sir Henry Twynam, K.C.S.I., C.I.E., Governor of the Central Provinces and Berar.

Secret

No. 188-G.C.P.

Camp, March 9th 1943.

Dear Lord Linlithgow,

I was greatly interested in the comments contained in Your Excellency's letter dated 4th March,¹ on the outcome of Gandhi's fast. I feel that I should like, if I may with respect, to congratulate you on the firm stand taken, in the form of tremendous pressure from so many quarters against this form of political coercion, as also on being the first Viceroy to defeat Gandhi at his own game. I think that the most noticeable feature of the reactions to the failure

of the fast to produce any concession is astonishment that (a) the Government of India and His Majesty's Government were prepared to face the music if Gandhi had died, and that (b) as 'epic fast' had for the first time failed in its effect. Your Excellency is aware how fully I agree that the line taken was the only possible line. I am glad to say that not only Dr Khare but also Sir Moropant Joshi had the courage to denounce the fast publicly: the latter, in a letter to the local press, enquired what would be the position of the Hindus if Mr Jinnah resorted to a fast in order to secure Pakistan. I have little doubt that the weapon of the political

fast has, as Your Excellency suggests, been very considerably blunted by the defeat which it has suffered. I fancy that the Mahatma will think twice before embarking on another fast and I think that his capitalist friends will hesitate before encouraging another manoeuvre of this kind because they know very well that they will lose a priceless asset if Gandhi is not available to represent them when the time for negotiation arrives. Everyone, of course, noticed and commented on the remarkable improvement in Gandhi's condition as soon as it became apparent that the Government did not intend to be coerced. I have little doubt that the Congress terms will be considerably lowered as a result of the failure of the fast. Some half-hearted condemnation of the violence of August last will probably be forthcoming and there will be general anxiety among those who are now in jail for a settlement because they certainly never expected to be made to pay in the way they are doing for their rash endorsement of the Congress resolution of 8th August last. Every possible means will be exhausted to get out of the impasse without losing face, but we have the satisfaction of knowing that we have nothing to gain, while the Congress has everything to gain, by an early settlement so that it does seem, now that the much dreaded fast has been squarely faced and defeated, that many of the bargaining counters are in our hands.

The one thing that I cannot help regretting, in this connection, is that the Birla brothers were not put away with the rest of the Congress leaders. I have no doubt that the matter was carefully considered and that there were good reasons against such action. Also I have never seen a history sheet relating to these people. But for so many years now, I have heard so much of their crooked and always anti-British activities and the financial support which they have given again and again to subversive movements, that in common with many other officers, I have often wondered how it is that they have escaped.

There is now a very general feeling voiced lately by Mr N.R. Sarkar that Congress committed an egregious blunder in turning down the Cripps proposals. Although the substance of those proposals less the independence clause, which I have always disliked and which I should regard as a complete breach of our trust towards the inarticulate millions of India still is the only basis on which political advancement seems possible, nevertheless, it is providential that Gandhi intervened, as he did, and secured their rejection, because nothing could be more fatal to our chances of bringing the war in the east to a speedy conclusion than the return to power of Congress Ministries before the struggle was completely over.

2. Reaction among Indian members of the Services to the news of Gandhi's fast were acute. One Patil, I.C.S., who now D.O., of Betul, wrote questioning my decision that we should fly the Union Jack on his residence. I dealt with him promptly by ordering him to make over charge to his senior E.A.C. and, when he arrived, he quickly ate humble pie and explained that he had not understood that the very mildly worded exhortation I gave him at Raipur in December last was to be taken as an order. It is, of course, most undesirable that any impression should be created in Betul, of all districts, where there is an inflammable aboriginal population which was responsible for many acts of sabotage in August last and where, almost as soon as I arrived in this Province, I found it necessary to supersede the District Council which had become merely an organ of the District Congress committee that the Deputy Commissioner was sympathetic to Congress and not solidly with the Government. I have allowed Patil to return to Betul, but he is poor creature and I am looking round for another job for him and hope to be able to persuade the High Court to reconsider their decision not to take him in the judicial service. We had definite information through an intercepted telephone message that one Guha, the Director of Industries, was contemplating

resignation. Another Indian I.C.S. officer has caused us embarrassment by contributing in his own name to the Capital Punishment Relief Fund organised by Dr Khare for the purpose of appealing to the Privy Council in the Chimur and Ashti cases. His attitude, when summoned by the Chief Secretary, was distinctly recalcitrant and a letter is now being drafted which will make it plain to him that although we have no objection to his contributing anonymously, we regard his contributing under his own name as clearly contrary to the provision of the Government Servants conduct Rules which lays down that 'Government Servants are bound to hold themselves aloof from any movements which are perfectly legitimate in themselves and which private persons are free to promote'. There have been rumours regarding other Indian members of the I.C.S. with which I need not trouble Your Excellency. I am doubtful whether many would have actually resigned when it came to the point, but I am resolved to make it clear to these people that they are not quite so indispensable as they think. This Province has perhaps rather an exaggerated I.C.S. mentality owing to the absence of the corrective influences which obtain in Calcutta, Bombay and other cities where there are large influential Mercantile communities. I have heard no suggestion of similar reaction among the Provincial Services and, in many ways, I prefer a tried and trusted Indian member of the Provincial Services to Indian members of the I.C.S. who tend to have exaggerated ideas as to their own importance.

3. I have read the Home Department publication of Congress responsibility of the August disturbance with great interest. It is certainly a formidable indictment and I have no doubt that it will be possible to supplement it with perhaps even more valuable material as press information comes to light and judicial decisions are placed on record. We are even now preparing a printed record of judicial decisions eliminating those portion which refer to the guilt of particular accused. We propose to bring out part I almost immediately and I shall send copies to Your Excellency and Maxwell. Part I will embrace the major judgments such as those in the Ashti, Chimur and Ramtek cases, of which typed copies have already been sent to the Home Department. Part II will include important judgments such as the one which we expect in the sabotage case which was organised from Vinoba Bhawe's Ashram. I need hardly say that I shall read with much interest the more important secret evidence bearing on Congress responsibility.

The Hindu press has, of course, virtually refused to give a reading to this document and has more or less pushed it one side. This was only to be expected because, as I foresaw at the very beginning, Congress would try to have it both ways, i.e., by frightening the Government into concessions by showing its power, at the same time disclaiming all responsibility for the outrages which were to indicate the extent of that power. I attach no importance to Congress newspapers reactions to the booklet, because they will obviously never plead guilty to the charge. M.N. Roy in *Independent India* has no doubt whatsoever about Congress responsibility. What is important is that British and American opinion should be kept informed. It is regrettable that the *Statesman* dismissed the pamphlet in a few irritable sentences.

In connection with the remark attributed to Pandit Shukla by a police officer which is reproduced in the booklet, the organ of the 'Servants of India Society', the *Hitavada*, came out with a leading article in which they stated, 'Incidentally, the Government have done a great deal of harm to the official concerned. He is certainly not going to escape notice when Ministerial Government returns'. I am having it examined whether this remark does not constitute a prejudicial act under Defence Rule 34. But, in the meantime, the newspaper got wind of our reaction and almost immediately published a paragraph to the effect that they

meant no 'incitement' by the leading article in question but only intended to warn the Provincial Government that it should not offer officials as targets for 'unbridled political malice and vendetta when Ministerial Government returns'. I am still awaiting legal advice before considering what action, if any, to take. . . .

1 Not printed.

37: News items in *The Times of India* (dt 24, 25 and 27 of March 1943)

Jayakar Collection - File No. 527

[NAI]

A Deputation of Leaders to Meet the Viceroy

It is understood that effort will be made to secure the Viceroy's permission to see Mahatma Gandhi and ascertain his views before the proposed deputation of prominent leaders waits on the Viceroy.

It is learnt that in reply to Sir Tej Bahadur Sapru's letter of March 12 to Sir Gilbert Laithwaite enclosing a copy of the statement issued after the informal meeting of prominent leaders in Bombay, Sir Gilbert has advised Sir Tej Bahadur Sapru that His Excellency would be pleased to receive a deputation of four members. But before receiving them, His Excellency would like to be posted in advance with the arguments which the deputationists proposed to put forth at the interview to supplement the Conference statement of March 10.

In this connection, it is believed that the elucidation sought relates to that part of the Conference statement which stated that, 'if Gandhiji is set at liberty he will do his best to give guidance and assistance in the solution of the internal deadlock and that there need be no fear that there would be any danger to the successful prosecution of the war', and the reasons which led the conference to come to this conclusion.

The personnel of the proposed deputation has not yet been fixed. Sir Tej Bahadur Sapru is ill, and it is stated that he may not be in a condition to undertake a journey for the next few weeks. Following are among the names mentioned in this connection:

Mr C. Rajagopalachari, Rt. Hon. Mr M.R. Jayakar, Mr G.D. Birla, Sir Purshotamdas Thakurdas, Sir Ardeshir Dalal and Mr K.M. Munshi.

Memorandum Being Got Ready

Allahabad, March 25

The United Press learns that Sir Tej Bahadur Sapru has informed the Viceroy that he has sent the letter from His Excellency's Private Secretary to Mr M.R. Jayakar and Mr C. Rajagopalachari and asked them to prepare the case behind the Bombay statement issued on March 10 last and forward it to Delhi.

It is understood that Sir Tej Bahadur Sapru has stated that on account of his being ill and being advised by his physicians not to leave Allahabad for four weeks, he might not be able to join the Deputation, but if he is well, he would.

It is learnt that the letter from the Viceroy's House asked as to what points the Deputation wanted to raise so that the Viceroy might be in a position to give a considered reply.

Sir Tej Bahadur has, it appears, also written to the Viceroy that the case prepared by Messrs Jayakar and Rajgopalachari should be treated as 'the case behind the statement'.

Extracts from *The Times of India* dt 27.3.43
Hope of Response from Viceroy
Leaders Move for 'Reconciliation'

Consultations regarding the next step to be taken in the 'reconciliation' move launched by the leaders conference in Bombay, in the light of the Viceroy's reply to Sir Tej Bahadur Sapru, are going on among some of the prominent persons concerned in the move.

The Viceroy's reply to Sir Tej Bahadur was to the effect that His Excellency was willing to receive a deputation of leaders, but at the same time he would like to have a written memorandum of the points which the deputation wished to urge. The letter further stated that the resolution passed by the Bombay conference was quite clear and a deputation might see the Viceroy if there was anything more to be explained.

Although this reply is regarded as indicating a certain 'reserve' in the attitude of Government, sponsors of the 'reconciliation' move are by no means discouraged by it. They are confident of making out a case which will evoke a better response from Government. The fact that Sir Tej Bahadur Sapru, though ailing, is likely to lead the deputation which may include Mr Rajagopalachari, is looked upon as a good augury.

38: Viceroy to the Governor of the Punjab

Linlithgow Collection

[NAI - MF Acc. No. 2226]

No. 30

To

H E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor of the Punjab.

Viceroy's Camp, Dehra Dun,
April 22nd 1943.
(Private & Personal)

My Dear Glancy,

Many thanks for your private and personal letter of 17th April,¹ No. 444. I am so glad that the Gandhi fast has gone so much into the back-ground—that indeed seems to be the case everywhere. Twynam has just passed on to me a rumour that the old man may be contemplating a 'fast unto death' on the 9th August, possibly accompanied by organised marches to Government houses, public offices, &c. I do not take that all too seriously. It quite clearly at this stage can be only speculation, for I am entirely satisfied with the completeness of the

arrangements that Bombay have made to keep the Mahatma out of touch with the world: and I should have thought myself that the explanation of it probably was that the 9th August is the 12 months anniversary of his arrest. But it is just as well so be prepared, though I do not think we need concern ourselves too actively at this stage.

Yours Sincerely

Linlithgow

1 Not printed

39 Extracts from *India since Cripps* by Horace Alexander

Horace Alexander, *India since Cripps* (1944), pp. 65-9

The present writer must confess that he first read the correspondence¹ last February with a sense of exasperation, which he feels again on re-reading it nine months later. The minds of the two men seem to be working in wholly different planes. It starts out hopefully, both the first letters are frank and friendly. The Viceroy is eager to respond if Mr Gandhi wants in some way to reconsider the position. Mr Gandhi in his second letter can still playfully say, 'My letter was a growl against you. Yours is a counter-growl'. But, alas, from growl it goes to barks, and from barks to something like a deadly fight. Mr Gandhi says (I here attempt to summarize): 'show me that I am wrong and I will recant'. The Viceroy says: 'The fact of violence is here. You can take it from me'. Mr Gandhi says, 'Of course, I know that there has been violence: but you haven't proved that I am the culprit'. The Viceroy says, 'But of course you are the culprit. The August resolution was your doing, wasn't it?' Mr Gandhi says, 'But that proves nothing. It was your arrests that caused the trouble'. The Viceroy says, 'But we had to arrest you. Otherwise you would have done no end of mischief. And you don't seem to have an open mind. What is the use of putting evidence before you? And now you are trying to find an easy way out of your responsibility. You are trying to blackmail me into submission to your demands. Do you call that non-violence?' And Mr Gandhi replies: 'What you, my friend, call a twenty-one day fast an easy way out, and you accuse me of blackmail. I had not thought it of you. Well, after that there is nothing for it but to begin, and I hope still that my fast will make some appeal to your better feelings'. And so he begins. Shouting at each other across hundreds of miles of space and hundreds of years of misunderstanding, they get further and further apart. If only they could have met.

But why fast in any case? What did Mr Gandhi really expect to get by fasting? To begin to understand we must consider his exact language. In his first letter he complains that the Viceroy had arrested innocent men. For six months Mr Gandhi had waited, hoping that the Viceroy as a friend would do something about it-would summon him to come and talk things over and try to convince him of his wrongdoing. But nothing has happened. Mr Gandhi still believes that he and his colleagues were unjustly treated. So he says, 'I had given myself six months in the hope that some day those that have power will realise that they have wronged innocent men'. The period is drawing to a close, so is my patience. The law of Satyagraha as I know it prescribes a remedy in such moments of trial. In a sentence, it is 'crucify the

flesh by fasting'. 'That same law forbids its use except as a last resort. I do not want to use if I can avoid it. This is the way to avoid it: convince me of my error and I shall make ample amends. You can send for me or send someone who knows your mind and can carry conviction'.

We have already seen how the correspondence developed. The main points to disentangle are two: What is this 'law of satyagraha' that he speaks of, which enjoins fasts as a last resort? And why did he resort to it now?

The word 'satyagraha' is best translated into English as 'soul-force' or 'truth-force'. In human affairs, when two men or two parties are in disagreement, they can try to persuade one another by reason, by persuasion and argument: and through such means a tolerable compromise is often reached and a new *modus vivendi* is established. But if this fails, and if they cannot reach an agreement, either a third party must be called into and settle their dispute for them, or one side must give way. Normally, in human history it has been the side that had the greatest physical force at its disposal which 'in the last resort' has been able to compel the other to give way. Mr Gandhi, sharing the widespread recognition that such 'argument by physical force' is in contradiction to reason and all the best instincts of humanity, has tried to discover some alternative method of carrying conviction, to be used only as a last resort, when reason has failed.

His principle may, I think, be fairly stated in the following terms. If neither party can convince the other by reason and argument alone, let means be found, not by physical coercion, but by one party demonstrating the intensity of its conviction by undergoing suffering instead of by inflicting it. Or one may put it this way: If you and I have an argument about some subject of vital interest to us both, and if neither can convince the other, how are we to resolve the deadlock? If your conviction of your case is so profound that you are prepared to undergo some severe suffering to demonstrate it, I am likely to be impressed. If I dislike you, your action may increase my anger: if I like you, your action may convince me that you really are right, or at least that I ought to give way. In either case I am bound to be impressed by the fact that you really do care. For a man will not undergo the rigour of a prolonged self-punishment except for a very deeply held conviction. Such penance certainly does not prove that he is right. But it does prove how intensely he cares, and how strongly he believes in the justice of his case. Whatever else it may be, it certainly is not an easy way out. It may seem as if he was taking an unfair advantage of the decent feelings of his opponent, but, in so far as he is in fact using force, it is an attack on the other man's feelings; the opponent has the option of refusing to be moved. Physical coercion is much more unreasonable, for it leaves no such option. If we reject this 'law of satyagraha', we either fall back on physical force 'in the last resort' or we must find some better way of resolving conflicts.

Now, the difficulty that Mr Gandhi is up against in India is this. The Government starts out from an assumption that he and his Congress colleagues cannot accept. The Government claims that it is the only lawful authority and therefore it has the right in the last resort to enforce obedience. If it cannot either convince or be convinced it will force the law against objectors, however 'conscientious' they may be. Nor can it admit that a third party should be called in to arbitrate. But Mr Gandhi and the Congress deny all this. They do not admit the legitimacy of the Government: they do not consider themselves bound by any social compact, even a tacit one. The present Government is to them usurpation. They have therefore not only the right but even the duty to resist it. But Mr Gandhi has insisted that such resistance is to be confined to non-violent actions. And the most perfect weapon of all, in his view, is

the pressure that can be exercised through fasting. 'This is, in his opinion, 'an appeal to the Highest Tribunal' which may mean both the conscience of mankind and God. When the Lord Mavor of Cork² fasted to death it is doubtful whether the most fire eating 'Unionist' really believed that the English reputation for justice was enhanced. His action might be perverse, but he had sealed it by giving his life, through weeks of suffering, without shedding the blood of his enemies. Somehow, something struck.

So, too, if Mr Gandhi had died last February, though it appears that there would have been rejoicings in New Delhi and in England, they would have been short-lived, and they would not have been shared by the world as a whole. Gandhi would have won.

Did he, in fact, lose? That, of course, depends on what he was aiming at. His first aim undoubtedly failed. He had hoped to touch the heart of the Viceroy, to persuade him to say, at the very least to. 'Well, let us get together in a friendly way and talk it all over. I will show you my evidence and seek to convince you. You must produce your evidence and seek to convince me'. But it achieved no such result.

But Mr Gandhi's fasts have secondary aims, too-secondary, but often more far-reaching. In the silence of his Poona internment, totally cut off from all communication with the outside world, he had evidently been troubled by the deeds of violence and the thought of violence and despair that were filling India. Fasting was the only means left to him to appeal to the people of India to discipline themselves, to purify and quicken their minds, to find ways of serving their fellow-men, instead of wasting their energies in idle disillusionment. Did his fast achieve anything in this respect? Certainly India has been more peaceful since March than was before. Government would probably claim that this merely proves that they had got well on top of the civil disobedience movement, and that Mr Gandhi's fast did not give it any fresh lease of life. Perhaps they are right, but perhaps Mr Gandhi's fast really did help to promote peace and order in the country.

Finally, there is the effect on the faster. A fast, as undertaken in India, is always intended in part to promote self purification. Only Mr Gandhi himself can say whether his fast was effective in that respect. But I can testify that in Poona during the last days of his fast there was a curious atmosphere among his family and friends, identical, as it seemed to me, with the kind of thing evoked by what Christians call 'retreats'. When they achieve their objective they become in fact 'advances'. People who came to Poona angry and pessimistic, after visiting Mr Gandhi's bedside, went away cheerful, hopeful, courageous.

1 This refers to the correspondence between Mahatma Gandhi and Linlithgow before Gandhi went on fast. Ed.

2 This is a reference to the Irish nationalist Terence Macswiney, who died on 24 Oct. 1920 after a 73 day long hunger strike. He had been Lord Mayor of Cork, Ireland - Ed.



40: Govt. of Bengal to all District Magistrates

Government of Bengal (Home) File No. 220/44
[Bengal State Archives]

Bengal Secretariat
Calcutta
The 3rd May, 1944

Secret.

D.O. No. 475-P-S.

My dear

Please refer to our Secret telegram No. 2121(32)-P dated the 29th April 1944,¹ about the health of Mr Gandhi.

In spite of the improvements reported in the press, Mr Gandhi's health is still giving cause for anxiety, as blood tests show that his kidneys have been affected. As far as can be judged at the moment, there is no immediate danger, but there is a possibility of his sudden collapse. In the event of his death, arrangements have been made by the Government of India whereby information will be conveyed to Provincial Governments before it is released to the press, and you will then be informed immediately by telegram containing the one word 'REGRET'.

2. In the event of death, there should be no attempt to stifle manifestations of national mourning. The preservation of the public peace should be the single touchstone by which all action should be tested and, in general, you should be guided by the instructions contained in Porter's D.O. letter No. 364-P.S., dated the 20th February 1943,² particularly in regard to meetings and processions. There should be no official recognition of the death by closing offices, half masting flags on Government buildings or by sending official messages and condolences to the family would not be same thing and we are opposed to half measure of this kind. It is desirable that this matter be settled now and we would again urge that our request be favourably considered.

Addl. Secretary.

¹ Not printed

² Not printed, but see Doc. 22 for a similar official viewpoint.

41: Extracts from Fortnightly Report from Bihar for the second half of April 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

Illness of Mr Gandhi – On the 29th April, it seemed likely from information received from the Central Government that Mr Gandhi would not live for many more days. Instructions to

deal with the emergency were immediately sent to all District Officers. Superintendents of Police, and police and military reinforcements were moved to strategic points. Arrangements were made for active patrolling in the mufossil areas and orders about press, educational institutions etc. were issued. In view of the subsequent reports about the improvement in Mr Gandhi's health, the local officers were told that they might relax the emergent precautions, to some extent, but they must be prepared at very short notice to re-impose them. In view of later reports, about deterioration in Mr Gandhi's health all concerned have been told that the warning for full preparedness may come at short notice. In face of the precautions taken, it is not likely that there will any serious trouble except hartals, though of course, there will be widespread condolence meetings and the like: but it is possible that the Congress Socialist Party may take advantages of the situation to carry out more outrages.

42: Government of India to the Government of Bengal

Government of Bengal (Home) File No. 220/44
[Bengal State Archives]

Most Secret
No. 11/7/44-M.S.

Government of India
Home Department
New Delhi, 9th May, 1944

Express Letter

Sir Richard Tottenham, CSI, CIE, ICS,
Addl. Secretary to the Government of India.

To
The Chief Secretary to the Government of Bengal

Your telegram May 3rd.¹ Closure of offices in the event of Gandhi's death. We are still opposed on principle to such action which would create undesirable precedent and which if taken in one Province might seriously embarrass others. You will note, however, that our telegram No. 5092 of May 1st² referred only to arrangements in event of sudden death in custody. Death from natural causes some time after release would be different and one might hope that it would provoke less resentment against Government and therefore reduce need for safety valve such as closure of offices. If, however, popular sentiment were to be worked up as a result of prolonged illness ending fatally, there might be case for reconsideration. We need not face that situation yet, but perhaps best course in such circumstances might be to

allow clerks and other Government servants to absent themselves from offices without actually closing them.

Signed
Addl. Secretary to the Government of India
Home Department.

- 1 Not printed.
- 2 Not printed.

43: Extracts from Fortnightly Report from CP & Berar for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

Political – Public interest is almost entirely focussed on the unconditional release of Mr Gandhi, which came as a surprise and which is welcomed by all Sections of the population. In Nagpur resolutions congratulating Government on its decision and praying for the long life of Mr Gandhi were passed by the District Communist Party, the Nagpur Municipal committee and the Sweepers Association. The Press is also unanimous in congratulating Government on the step taken. Preparations are said to be going on in Sewagram to receive Mr Gandhi and remodel his hut, should he return there. In Wardha, there is said to be speculation as to the political effect of Mr Gandhi's release and it is understood that amongst the right wing hope is entertained that Congress Policy will be reoriented to suit present conditions. Anxiety about Mr Gandhi's health continues and prayers were offered in different districts for his speedy recovery. The release has given an impetus to interest in the 'Kasturba Memorial Fund' and Committees with the object of collection of funds were formed in Nagpur and Jubbulpore. The release has also raised hopes that Government will also release other leaders and that steps may be taken to solve the political deadlock. Public opinion does not appear to believe that the step taken by Government in releasing Mr Gandhi was due solely to the condition of his health.

44: Extracts from Fortnightly Report from Madras for the first half of May 1944 – release of Gandhiji

File No. 18/5/44 – Home Poll (I)
[NAI]

Political – The release of Mr Gandhi has been the outstanding event of the fortnight and was hailed with universal satisfaction. There has been a certain amount of apprehension at the beginning of the fortnight about his health and his continued detention in jail and instructions

had been given to District Magistrates and Police to stand by in case of emergency. The news of his release came as a most unexpected surprise and the first reaction was one of real gratitude to the Government for what is recognised as a very generous gesture. Every stress has been laid upon the fact that the release was on purely medical grounds. But the general public are still inclined to regard it in a different light and as forerunner probably of further releases to be followed by an attempt to solving the present political deadlock. The Nationalist Press has hailed the news with delight and emphasis has been laid on the desirability of releasing other Congress leaders with a view to allow the members of the Congress Working Committee to consult Mr Gandhi.

45: Government of Bengal to the Government of India

Government of Bengal (Home) File No. 220/44
[Bengal State Archives]

Government of Bengal

To
The Secretary to the Government of India
Home Department

File 220/44
Issue Number 562 P.S.
Date of Issue 29.5.44.

Express Letter

Your Express letter No. 11/44-M.S. dated 9th May 1944.¹ Closure of offices in the event of Gandhi's death. Our request was not intended as safety valve but as mark of respect to personality who, however unpalatable his politics may be to us, has attained world eminence and a special place in the hearts of Indian people. Closure of offices would be a chivalrous gesture and in our view would meet with wide appreciation. In Bengal, Government offices in Calcutta and Dacca were closed in 1915 on death of Nawab Khwaja Sir Salimullah Bahadur and when Dr Rabindra Nath Tagore died in 1941 all Secretariat offices were closed and Heads of Departments were asked to notify all concerned. In such circumstances failure by popular League Coalition Ministry to close Government offices in event of death of Mr Gandhi would be misunderstood and might have undesirable consequences. Allowing clerks and other Government servants to absent themselves from offices would not be the same thing and we are opposed to half measure of this kind. It is desirable that this matter be settled now and we would again urge that our request be favourably considered.

Addl. Secretary.

46: Extracts from Fortnightly Report from the Government of CP & Berar for the first half of November 1944

File No. 18/11/44 - Home Poll (I)
[NAI]

Political — Sevagram continues to be the Centre of numerous Congress activities — mostly of semi-political character. The trustees of the Kasturba Memorial Fund met under the Chairmanship of Mr Gandhi and a draft trust deed was approved. Various Committees were proposed or appointed for organizing schemes of medical relief, education, maternity, child welfare, etc. It would appear that this fund is intended to finance the opening more of Mr Gandhi's village reconstruction programme. Mr Gandhi also attended a meeting of the executive Committees of the 'Talim Sangh'.¹ The Sangh resolved to call a conference of educational workers in January in order to prepare a comprehensive scheme for rural education. The All-India Gosewa Sangh met and discussed its future programme. Mr Gandhi was present at the meeting. Amongst other Congress institutions which held Conferences at Wardha were Harijan Sewak Sangh and the Hindustani prachar Samiti.

Varying reports are current regarding Mr Gandhi's proposed fast. Every one who visited him at Sevagram found it necessary to make a public statement later about Mr Gandhi's doubts and difficulties in this respect. It is believed in some quarters that the slogans 'Fast unto death' has now more propaganda value in rallying support for the Congress than 'Quit India' and other pre-August 1942 Congress plans.

¹ The association which promoted the Mahatma's ideas on 'Rural Education'. [Ed]

V

Role of the Communist Party of India

The documents on the role of the C.P.I. in this period shows how this party, which had, since its inception, been viewed with suspicion by the Raj, took advantage of the lifting of restrictions imposed on it. Very little evidence is available to suggest that it was regarded by the Raj as an aid to suppress nationalist and popular disaffection. On the contrary, the authorities continued to be suspicious of this party, released the leaders only in instalments and keeping some in detention for more than a year (Doc. No. 105). Because the party organ *People's War* was supporting the war effort and, in the trade union world, acting in a stabilizing mediatory role between management and organized workers, it was not deemed subversive in the same way as the Congress was. The Government's suspicion and surveillance however continued -- the large volume of the correspondence of party workers intercepted by the intelligence branch (of which many have been quoted below) is a proof of such surveillance. Other examples of the Raj's uneasiness about the Communists as reliable collaborators are to be seen in the profound hostility to recruiting them as A.R.P. wardens in Calcutta (documents No. 2-12, 19, 26) and the decision not to allow Security Prisoners in prison to have access to the C.P.I. organ *People's War* (Chapter II - Doc. 111). The observations of J.V.B. Janvin, Deputy Commissioner, Special Branch, Calcutta Police, on the A.R.P. controversy (Document No. 11, note dated 20 January 1943) and his report to the Viceroy in August 1943 about Communist ascendancy in the trade union world in Calcutta shows that the Raj had reluctantly conceded the C.P.I. the right to exist as a legal political party without any illusions about its 'trouble-making' potentiality after the war was over (Doc. No. 65). From different parts of the country, the reactions of police officers and other bureaucrats in charge of internal security to the activities of the C.P.I. were critical (Docs 29-31, 38-41, 48, 50). What irked the government was that in its propaganda the C.P.I. did not spare the imperial bureaucracy for such inefficiency in civil administration as it could notice; its tone was far from being obsequious and from the Government's point of view its support to the war effort and its criticism of Subhas Bose were the main plus points in its favour. Even on the latter point, it was disturbing news indeed when a Bengal intelligence report said that one party worker said that he would admire Bose if it was proved that he was fighting for Indian independence and not for Japanese domination (last part of para-2 of Home Poll 7/23/43 - Poll (I) cited here as Doc. No. 56).

The assessment of the reliability of the C.P.I. as a pro-war radical group which could be safely left at large also influenced the Government's decisions on another pro-Soviet leftwing splinter group, the Bolshevik Party of India (Docs 52, 65; also see Ch. II Nos 36, 37, 39).

Unlike the loyalist classes whose privileges and powers were tied to the fortunes of the imperial State, and the survival of the British Raj, the C.P.I. considered itself to be part of a worldwide anti-Fascist movement lead by the Soviet Union, and believed that the fall of Fascism would create the appropriate climate for achieving victory in an anti-imperial struggle. In the documents selected for the chapters in the Peasant movement, the Labour movement, Bengal Famine, we get more evidence of how it was utilising the freedom given to it to operate as a recognized political party to increase political consciousness across communal barriers among the lowest strata of society. Its cadres fanned out into the lower echelons of the war-induced

expanding bureaucracy, and bided their time for the post-war struggle for power. As we have already stated in the main introduction, on the Bengal Famine its constructive role was noticeable. Even while working with the Kisan Sabha, it took an active part in the 'grow more food' campaign (Ch. IX, No. 103 and 108). It was a realistic assessment on their part that the spontaneous revolution of August 1942 would end up in a *cul-de-sac*, and that it was important to keep one's powder dry.

Other Documents Relevant to this Chapter

1. Doc. 75 Chapter I - Section C.
2. Doc. 32 Chapter II
3. Doc. 100 Chapter II
4. Doc. 108 Chapter II
5. Doc. 130 Chapter II
6. Doc. 126 Chapter II
7. Doc. 149 & 150 Chapter II
8. Doc. 58 Chapter VIII
9. Doc. 43 Chapter IX
10. Doc. 19 Chapter IX
11. Doc. 16 Chapter X
12. Doc. 33 Chapter X
13. Doc. 29 Chapter XVIII

1. Article in *People's War* on Kayyur Brothers (dt 3.1.1943)

People's War (No. 26)

[NMML]

'Kayyur Comrades' Stirring Call

To Unite and Defend the Country

These comrades are Communist Kisan leaders of Kasargode Taluk, South Kanara. Risen from the ranks of the peasants, they led and built the heroic peasant movement in that district during the years 1938-1941, against the oppression of the *zamins* (landlords) and government. It was while leading one of these protest demonstrations that on the 28th March 1941 a police constable, came into conflict with the processionists, sustained injuries, and died.

The Sessions judge, was of opinion that the man who dealt the fatal blow may not even be before the court, but he held the four comrades to be constructively liable for murder, and sentenced them to death. The Madras High Court confirmed the sentence.

Our heroic comrades are facing death courageously as patriots should. From the shadow of the gallows they have sent this inspiring message of courage and hope, this mighty call to the 400 millions of our great land to unite and go forth to smash the Fascists who come to deface our Motherland, a call to sacrifice our all at the alter of national liberation.

2. Letter of Somnath Lahiri (member Communist Party of India) to the Editor, *Statesman* (dt 4.1.1943)

Govt. of Bengal (Home) File No. W/58/43

[Bengal State Archives]

Letter to the Editor An A.R.P. Complaint

Sir,

On Dec. 26, I applied to the Muchipara Staff HQ of the local ARP to enrol myself as a voluntary warden. After waiting for 3 days during which much of my time had to be wasted having to call on the officers concerned 3 times every day. I was informed by the staff officer that they had no plan of recruiting voluntary wardens for the time being and, therefore, my application could not be entertained. Another friend of mine who volunteered was treated in the same manner.

Sir Jawala Srivastava, Member-in-Charge of Civil Defence, Government of India, in his speech at Calcutta on Nov. 27 'regretted that in some of the A.R.P. services in which honorary service was required, the response of volunteers was not so satisfactory . . . One was the Warden Service, in which out of a total number of 13,000 volunteers required they had only 1250 so far. He hoped that the deficiency would be made good.' (Report of his speech in the *Statesman*, Nov. 28).

Since then bombing has taken place at Calcutta and it is reasonable to assume that the need of voluntary wardens has increased. Persons like us who volunteered after experience of 4 nights' bombing were apparently serious. May I ask what has happened since Sir Jawala's speech for the ARP authorities to give up the plan of recruiting voluntary wardens?

Yours, etc

Somnath Lahiri,

Member, Communist Party of India

Calcutta, Dec. 31.

3. Official Notings on A.R.P. Recruitment (dt 4.1.1943-7.1.1943) extracts

Govt. of Bengal (Home) File No. W/58/43

[Bengal State Archives]

I was asked to meet a number of labour leaders in CS's room this afternoon and I was handed the enclosed regarding the recruitment of wardens. I made it clear to them that there was no objection to the recruitment of Communists so long as they join as private individuals and not as members of the Communist Party of India.

Would controller consider what, if any, statement should be put out to the public? We can take the plea that the controller is busy enrolling and training the paid personnel. Is this enough however? Provision exists for Class III instructors & Class I instructors for that matter sufficient to cover the numbers of volunteers. Can anything be done when the S.O. is satisfied that individuals appear *prima facie* suitable to take them in & take up the question of training? It may be impossible — the controller should be able to say — but, I feel that as Government's policy is to take in the right type of volunteer who will undergo training, we don't want to face, if we can avoid it, a campaign of allegations that nothing is being done for the willing volunteers. It would be all to the good if we could ensure that such people did not get an opportunity of making such a cry.

Could the controller devise some procedure?

P.D. Martyn*
4.1.43

Please see my papers below on which I shall be glad of early orders. We are willing to take in and train volunteer wardens when we can do so, If they had applied months ago they would have been trained by now.

I am not prepared to enrol them until they have completed their training. We can tell volunteers to send in their application with a statement how many days & hours per week they will be available for training, as soon as their training can be taken up. It is their own fault for not volunteering earlier.

A.S. Hands.
7.1.43

4. Petition of the wardens and messengers to the Controller of A.R.P.

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

The Controller A.R.P.
Calcutta.

4.1.43

(Through proper channel)

The humble petition of the Wardens and messengers (A.R.P.) of Calcutta most humbly sheweth:

1. That your humble petitioners are A.R.P. Wardens and messengers in Tollygunge Sub-area.
2. That your humble petitioners find it extremely difficult to make two ends meet with the pay that has been given to them in view of the abnormal rise in prices of food-stuff, clothing and all other necessities of livelihood—the rise being, in some cases, nearly triple of what the price was when, our petitioners' pay was fixed.

3. That it is needless to impress upon you that your humble petitioners are servants for 24 hours and they are rightly termed as the flesh and blood of the A.R.P. organisation in view of the most responsible duties entrusted to them. The duties, your humble petitioners have got to perform, involve risk to their lives and unflinching devotion to duties that is expected of them, requires that they should be sufficiently provided for.

4. That a certain sum of money as deducted from the dues of the warden and messengers when they resign or are discharged, in lieu of the uniform and shoes to them for their use when they are in service. We pray that this system be abolished and the old uniform and shoes be taken back and not the money.

5. That the torches and batteries given to the wardens posts are generally so bad that they burn only for few minutes and then go off. This is a serious difficulty for the Wardens who will have to act at night in complete darkness. And also the water-bottles that have been given to the wardens and messengers being made of tin are already rusted and remain the source of poisoned water. These require immediate removal for better equipments.

6. That the Wardens in case of heavy raids over Calcutta might be faced with the task of working 24 hours on the spots of incidents. As, under those circumstances they will not get opportunity for going to houses for meals, your humble petitioners need be assured that adequate arrangements are being made for supplying food by mobile canteens. Payment is required on the 1st day of every month.

7. In these circumstances your humble petitioners pray to you gracious honour to move in these matters so that the Government may be pleased to sanction the grant of increment pay from Rs 30 to Rs 75 per month, so that your petitioners may work efficiently in these hard days when Calcutta has become the target of Air raid and that the other prayers may also be granted for which act of kindness your humble petitioners will remain ever grateful to your honour.

We have the honour to be
Sir,

Your most obedient servants.

(Names of the signatories are not printed - Ed)

Dated Calcutta.

The 4th January 1943

N.B : Copy forwarded to the Controller.

5: Official Noting on A.R.P. recruitment (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

O.C.W.S.*

In this joint petition¹ the warden and messenger have enumerated their grievances. It appears that some outside agency is behind the screen. I reported this (verbally) to you on 4/1/43.

'They have been told through their P/W/S that they will get free rations & coal from 1/1/43 & that the other grievances are being looked into. They have been given time to withdraw their signatures in view of which disciplinary action may be deferred.

The ring leaders will in any case have to go.

Basu
Warden.
5.1.43.
Tollygunge

- * O.C.W.S. — Officer in command Warden Service.
1. See document 4.

6: Official Note on A.R.P. recruitment (dt 5.1.1943) (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

O.C.W.S.

As has already been reported to you and the Dy. Controller verbally, quite a large number of persons have come forward of late since the last raids to be enrolled as volunteer wardens. They say that they are Communists and have been asked by their leaders to join the A.R.P. and that the object of them joining A.R.P. wardens service is to minimise panic among the public. It appears however that they have other intentions besides these. For this reason I have stopped recruiting volunteer wardens. Exception is made only in case of persons who are already in Government Service.

These persons who call themselves Communists bring their own enrolment forms.¹ A Specimen is attached here with.

Basu
s/o Warden Tollygunje
5.1.43

¹ Not printed.



7: Senior Warden, A.R.P. to Staff Officer A.R.P.

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

Staff Officer
Wardens Service,
Shampukur. 8/A.

Sir

I regret to inform you that the members of the Communist Party, a political Organisation in my Post Area has started disturbing my regular activities on the grounds that they have been refused enrolment in the warden's Service A.R.P. Calcutta.

It appears that on this refusal to enrol Communist Party members in the service an attempt is being made to sabotage the local organisation by trying to form a public opinion against the service.

It further appears that Satyen Gupta, a member of the Communist Party, managed to enrol himself as a part time warden in my post who has threatened me with an ultimatum that unless his party members are allowed to enter the Service they will move against me and the S.O. through the press. Sir I think that this should be noted by you and if you think it necessary should be brought into the notice of the higher authorities.

I have the honour to be
Sir
Your most obedient servant.

Amalendu Ganguli.
Senior Warden
P.A.I. 5.1.43

Official Comment

Facts stated by the Senior Warden are true. Satyen Gupta managed to enrol himself as a volunteer Warden in my sub area without letting me know that he belongs to the Communist Party. He was introduced to me by his wife Mrs Nirupama Das Gupta, a paid woman Warden of my Sub-area. Orders solicited if he should be discharged immediately.

Signed

To Dy. Controller, for perusal & necessary orders



8: Official Notings on A.R.P. (dt 5.1.1943–7.1.1943) (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

The writer¹ of the letter below is a well known Communist of all-India fame and he was concerned in several conspiracy cases both in Calcutta and Bombay. That the Communist Party is trying to infiltrate into the A.R.P. organisation is obvious from the active propaganda they have taken up both in the Press and by means of leaflets which they have circulated in the various Posts to stir up an agitation among the Wardens over increases of salary and other grievances fancied or real. And unless this agitation is nipped in the bud serious consequences will follow.

It will be evident from the petitions submitted by the Wardens of Tollygunge Sub-area and the one reported to have been circulated (by s/o Muchipara) in the Wardens' Posts in his Sub-area that the source of origin is the Communist Party of India. It is also noteworthy that this party has managed to issue cyclostyled copies of enrolment forms in brown paper which are being presented by members of this party for enrolment as Vol.² Wardens to s/o's in different sub-areas. As there should be a distinct check upon the attempts of the Communist party to enlist as Vol. Wardens and thereby cause disruption in our organisation I have asked my s/o's to give them a wide berth. And I hope my action in this respect will be approved.

Signed

O/C., Wardens Service,
South Calcutta
5/1/43

Controllor and
Dy Controllor

As I informed you verbally on the 4th instant, there is a planned attempt on the part of the Communist Party of India to drive out of our organisation men who are not of their political persuasion and at the same time to put in men who are members of their Party. As evidence of their first objective I cite the article flagged 'A'³ in their Party Weekly of the 25th November 1942, which is an attempt to discredit the present A.R.P. administration before the public and a direct incitement to the personnel to undertake organised agitation against that administration, also the petition from Tollygunge Wardens and Messengers flagged 'B',⁴ which has been drawn up in a standard form for use in all sub-areas and which there is good reason for tracing to the same source, and the typed application flagged 'N',⁵ which is reported by the Staff Officer of Muchipara to have been distributed by the Communist Party among the wardens of that sub-area; further, the oral testimony given to me by the Staff Officer of Ballygunge that 4 men on cycles, suspected to be members of the same Party, have been round every Post of his sub-area three nights ago exhorting the wardens to fight against their service conditions. As proof of the anxiety of this Party to put in their own men in large numbers in the A.R.P., I have the reports of the Staff Officers of Shampukur, Jorobagan, Jorasanko, Burra Bazar,

Watgunge, Tollygunge, Amherst Street, Entally and Muchipara to the effect that groups of men and women declaring themselves to be members of this Party were offering themselves for enrolment as volunteer wardens, stating explicitly in some cases that they had been directed to do so by their Party Leaders. In some cases (vide flag 'F')⁶ the offer to volunteer was accompanied by threats in anticipation of refusal. In many they brought their own enrolment forms cyclostyled on brown paper, two specimens of these forms being flagged 'C'.⁷

The attempt to cause disaffection among our present ranks and to simultaneously replace our present men with members of their own Party inclines me to the view that the Communist Party is acting with mala fide intent. I have asked the Staff Officers for reports on specific individuals and instances of deliberate attempt to cause disaffection among our ranks. I propose to send up these cases to the Police for taking cognizance as prejudicial acts. I have also instructed the Staff Officers to shut out candidates whom they have reason to believe to be members of the Communist Party. This is easier to do in cases where these people come in groups on a declared political ticket. It will be more difficult if they attempt an insidious infiltration individually but not impossible, in view of the poor turn out of volunteers so far and our restricted facilities for training new recruits at the moment. I may mention that out of 1208 volunteer wardens who were on our rolls in the week ending 18th December 1942, an average number of 431 reported for action at the different Wardens' Posts during the last five raids. We have also a large body of new recruits enrolled recently as a result of the communal recruitment order whom we have to train up first. It would not be difficult to fend off undesirable individuals with these excuses and I have suggested to the Staff Officers that it will be expedient to do so.

I trust the line I have taken has your approval and that of Government.

S.K. Dev

Deputy Controller

7.1.43

Controller

Clearly this cannot be allowed to continue and I agree with Deputy Controller's two proposals.

- (1) That where persons are attempting deliberately to cause disaffection amongst the A.R.P. personnel they should be reported to the Police with request for action under the Defence of India Rules.
- (2) That we should not accept any candidates for enrolment whether as paid or volunteer personnel who are members of the Communist party.

With regard to (1) it is quite immaterial whether the person attempting to cause disaffection is a member of the Communist Party or not and the action proposed is not directed at members of the Communist Party of India in particular.

With regard to (2) it is Government's declared policy that anyone wishing to join the A.R.P. Service must do so as a citizen and not as a member of any particular political party, and I think it follows that if one joins as a citizen though being a member of a political party also, and after joining does anything to propagate the views of his party he should be discharged from service. In this case it is clear that members of the Communist Party of India are attempting to join the A.R.P. Service as members of their party and evidently for pursuing the objects of their party which appear to include stirring up disaffection amongst the existing personnel. Therefore I can see no objection to the action proposed in (2).

2. It is a matter in which I think Government's approval is necessary and I request very

early orders. If Government approves these proposals I suggest that it should be stated in a Press note which should at the same time with reference to the cuttings from the 'Statesman', state the full facts (as shown in these papers).

3. As regards the recruitment of volunteer wardens we must in any case slow this up until we have trained the new paid personnel. The answer to criticism is (1) that out of 1250 volunteer wardens on the rolls on 18.12.42 only 431 on an average turned out for duty during the raids though all were expected to turn out on the Red Warning (2) that the object of recruitment is to have your services ready to function when raids begin, and if after having ignored Government's appeal for volunteers for over a year, persons come forward after raids they cannot expect to be taken on and trained at once when we are engaged in recruiting and training some 500 or more whole time paid wardens.

Home (Defence) Department.

Mr Martyn

A.S. Hands
A.R.P. Controller, Calcutta
7.1.43

1 Somnath Lahiri (Doc 2)
2 Volunteer.
3 Not printed
4 Doc. 4
5 Not printed.
6 and 7. Not printed.

9. Official Notings on A.R.P. recruitment (dt 8.1.1943) (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

I have mentioned the case to Addl. Secy. — forward the papers to him for his perusal and comments from the political point of view. It would be of value if we could be informed if the I.B./S.B. have got any line on these activities and Government's general policy with regard to the problem.

2. It is clear that prejudicial activities, whoever may ferment these — must be punished.

3. So far as enrolling C.P.I. members as volunteers we shall have to keep them at bay by saying that we are too busy taking in and training paid personnel; asking them to state how many hours they will give to A.R.P. etc. If however, there is an indication that the C.P.I. are trying to capture the organisation or stir up trouble they will have to be punished.

P.D. Martyn
8.1.43

10

An article from *Janayuddha* on A.R.P. recruitment

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

Home – Govt. of Bengal

Janayuddha ('The People's War')
Weekly Organ of the Bengal Committee of the Communist Party.
Wednesday the 13th January 1943.

(Leading Article)

Why does not the A.R.P. accept patriots?
Is it a club for spies or a citadel of fifth-columnists?

Drive out the Spies, Call the Patriots

The last few days, the nights have been dark; the citizens too were to a great extent free from anxiety. As moon-light nights are again approaching the fear of Japanese bombs is again raising its head in the minds of the people. Calcutta is the focal point of the economic and political life of Bengal. Whatever happens the citizens of Calcutta will have to continue here anyhow. Worry about personal safety is universal; hence everybody is devoting more and more attention to the A.R.P. measures for the protection of the city.

And not only in Calcutta. Air raids have occurred in certain mofussil towns such as Chittagong and Feni and in some places in Assam. No town of Bengal is beyond the range of Japanese bombers. Seeing that the Japanese assassins have indiscriminately slaughtered unarmed civilians at so many places taking advantage of darkness like cowards who can say with any assurance that other towns will be safe from their murderousness? Therefore it is that A.R.P. and measures for defence against bombs has become the most important subject to people in every town in Bengal.

How is it then that in spite of all this people do not join this organisation in crowds? The Congress has already advised everybody to co-operate with Government in civil defence measures such as the A.R.P.; other major political parties of the country too, like the Muslim League, Hindü Sabha, the Communist Party, have repeated this. Why then are the majority of patriotic young men and women still outside the A.R.P.? It is only a month and a half ago that Sir Jwala Prasad, the Head of the Civil Defence Department of the Government of India declared that the response from volunteers has been very little in Calcutta where the need is great, – 13,000 wardens are required and the number of volunteers coming forward is only 1,200; he also said that nearly 40,000 volunteers are still required for the House Fire Protection Parties. In a huge city like Calcutta the number of paid wardens is only 3500. It is absolutely correct to say that in these circumstances thousands of volunteer wardens are essential to the carrying out of the work required. We describe elsewhere the state of affairs in a big mofussil town like Mymensingh. There too we see the same deficiency. The patriotic youth of Bengal have faced innumerable dangers on many occasions to save their countrymen and have served

their country without regard for their own lives. In the recent cyclone relief work in Midnapore fresh evidence of this has been demonstrated. Why then do they not come forward to strengthen the A.R.P.?

The reason is that the superior posts of the A.R.P. have been filled up with men who are police spies. The list at the first glance is dismaying; one wonders whether this is A.R.P. or the Detective Department of the Police. We reported last time that the Commanding Officer for the Southern Section is an ex-detective, by the name of Mr Bonbihari Mukherjee. Now on further inquiry it appears that nearly everybody is tarred with the same brush. Most of the Commanding Officers are either retired spies or spies on deputation, or else officers of some other branch of the Police force. An ex-detective named Rai Sahib Pulin Chatterjee is the Commanding Officer for the Northern Section; another detective, Mr Shamsuddahar, has been made, probably on deputation, Commanding Officer of the House Protection Fire Parties, It is specially noteworthy that each of these three men has been in the political detective department (I.B. and S.B.). In addition, it is learnt that the Commanding Officer for Communications Mr Robertson and the Commanding Officer for Training Mr Carman are both men of the Police Department. There is no knowing how many more further careful investigations would reveal.

It is easy to understand now why the people of the country show no eagerness to join the A.R.P. as volunteers, and why Sir Jwala has to lament the paucity of volunteers in the A.R.P. (Is this feigned sorrow or is it lamenting over a situation without comprehension?) Ordinarily people regard political detectives as instruments of the policy of repression; who would then voluntarily place himself at the mercy of these super-spies? And how can an organisation where these men are in authority appeal to patriotism and to patriots?

We think Sir Jwala's lamentation to be a pose. For the authorities of the spy-infested A.R.P. are definitely putting obstacles in the way of volunteers who may wish to join the A.R.P. It appears from Comrade Somnath Lahiri's letter¹ published in *The Statesman* the other day that those who are offering themselves as volunteers are being turned away with the reply 'We are taking no more volunteers now'. Since then we have received several complaints from many patriotic young men that they too have been refused on some plea or other of this nature.

The A.R.P. is for the citizens, and yet they have almost no relation with the organisation. In the beginning the Ministers gave the assurance that the administration of A.R.P. would be conducted with the advice of committees set up in each locality, composed of local inhabitants. Has even that assurance been shelved now behind the spies? In factories the primary problem is the protection of the workers but there, with official sympathy, it is the proprietors who are all in all in regard to measures to be adopted. Japan's henchman Subhas Bose, sitting in Berlin, is in raptures over the Japanese bombs that are killing us. And the Hon'ble Minister Santosh Basu, the beloved pupil of the beloved brother of that Subhas Bose, is apparently in charge of the measures meant for our protection.² He will doubtless take up a firm stand against the bombs and murders of the employers of the agent, Subhas. What hurts is that under the double measures of police spies on the one hand and the Hon'ble Minister-in-charge on the other, the man in the street has no authority in the management of A.R.P.; the only responsibility he has is to suffer loss and if need be to die.

To every single citizen! To each patriotic young man and woman! Come forward and demand 'We want the public to control the A.R.P. We do not want spies; we want every patriot to be in the A.R.P. organisation.' Smash the barriers set by the authorities in the path

of the volunteers. It is we who have to save our own lives. Organise Fire Parties in each and every big house locality and bustee; form A.R.P. Committees with the people of the locality; force the local A.R.P., through the Committees, to give you what you require; enlist yourselves as volunteers in hundreds; and if the authorities obstruct you, organise such an agitation as would smash all obstacle

1 Document No 2

2 Santosh Basu was a nominee of Sarat Chandra Bose in the Progressive Coalition Ministry of Fazlul Haq

11. Official Notings on A.R.P. recruitment (dt 20.1.1943-26.1.1943) (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

C.P. (Commissioner of Police)

The C.P.I. definitely wish the Communists to win this war and are therefore supporting the war effort. After the recent air raids they did their little best to steady labour and persuade them to remain at their posts.

At the same time, when victory is assured they plan to capture power and with this end in view have been endeavoring to bring labour under their control and to infiltrate into the Armed Forces and the essential services.

The A.R.P. Service, however, is on a different footing, for as soon as victory is achieved danger from air raids will no longer exist and the A.R.P. Services will be disbanded. If only for this reason the C.P.I. is not likely to make any serious effort to capture the A.R.P., and they are naturally piqued when some of their members are rejected. In practice few members of the C.P.I. will volunteer for the A.R.P.; still fewer will be prepared to undergo a thorough course of training — I recommend that they should not be appointed until after undergoing a course of training so that if any unpleasant individual volunteers he may, as a practical measure, be eliminated on the ground of being found unfit for some reason other than a member of the C.P.I.

J.V.B. Janvin
D.C. S.B. Calcutta.
(Deputy Commissioner, Special Branch)
20.1.43

Dy. Secy.

My advice is to send them out. These people are dangerous and becoming increasingly so. Their effect on the tramway personnel is well known (a complete breakdown of discipline) Their effect in the A.R.P. Services will be the same. This pressure should be resisted.

Signed
21.1.43

I think that it is politically & practically impossible to keep out members of the C.P.I. merely on the ground of their membership.

2. The implications of the support which they are getting from HMG and GOI must always have been clear and we must presume that they have been accepted.

3. I know of nothing which would justify the deduction that enrollment in the A.R.P. is sought in order to sabotage the services and to obstruct their efficiency. It is I think true that they would be very uncomfortable associates and that any opportunity would be taken to spread their own influence with a view to their ascendancy when a suitable opportunity occurs for exploiting it but if my view in para 2 is correct this has to be accepted.

4. I am not suggesting that membership of the C.P.I. should be taken as a qualification entitling an individual to appointment. But I think that an individual otherwise suitable should not be turned down merely on the ground that he is a communist and that when a Communist is turned down it would be expedient to make it clear that the points are independent of the political prejudices. J.S. will doubtless show this case to C.S.

Signed
26.1.43

12. A.R.P. Controller to Joint Secretary — Home Department

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

Office of the A.R.P. Controller Calcutta.

Memo. No. 223 (5) A.R.P.

dated 20th January 1943.

I enclose a copy of Home (Defence) Department Express letter No. 225/Def. dated 8th January 1943¹ relating to recruitment to the A.R.P. Services. The following instructions deal with that letter and other matters of recruitment which have recently arisen and which require to be settled.

2. The main point is that an earnest endeavor should be made to obtain Muslim and Scheduled Caste personnel to fill vacancies that may occur and that every endeavour should be made to give preference to them in filling vacancies; but if Muslims and Scheduled Castes of the right type are not available members of other communities may be appointed. At the same time vacancies are not to be kept unfilled while a search is being made for members of particular communities. It is to be noted that there is no question of lowering the standard of qualifications required.

3. Government point out that the organisation must not be weakened by the appointment of men who are not resident when they should be resident. Our experience has shown that it is necessary to fix a definition of 'residence' in Calcutta. I have decided that a candidate (no matter what his community) ordinarily will not qualify as a resident of Calcutta unless he has lived a total of 12 months in Calcutta since 1st January 1941. It is open to Heads of

Services to relax this qualification. I think usually it will be wise to insist on it except in the Rescue Service where many of the men come from other districts but have nevertheless stuck to their jobs. Where a candidate claims to be a resident of Calcutta, it should be verified e.g. enquiry through post wardens to ascertain how long he has resided in Calcutta since 1st January 1941.

4. Government have agreed that it is impossible to advertise on every occasion when vacancies occur but the Controller is required to 'consider what steps of a systematic nature should be taken to ensure that vacancies are widely known.' Having done that the Controller is given discretion to adopt his own methods for securing the personnel to fill vacancies that may occur.

5. We have found that advertising widely for personnel is not a success. Under the Government Orders issued in October-November 1942 for the recruitment of Muslims and Scheduled Castes only, in the proportion of 10/13ths and 3/13ths. 1039 vacancies of different kinds were advertised; 4921 applications were received and an immense amount of the time of officers was wasted in interviewing these candidates; 821 of these were found qualified and were asked to join the service, leaving 218 vacancies still unfilled in spite of wide advertisements. Of the 821 who were selected, 325 either failed to join or having joined deserted when the raids began. We therefore were left after a few raids with 543 vacancies still unfilled out of the 1039 advertised.

6. For the various A.R.P. Services we do not now require a vast number of recruits at any one time, but relatively small numbers from time to time. Also we require men who will stick to their posts when raids occur. Therefore careful selection is more important than spectacular figures of recruitment on paper. Under Government Orders of 8th January 1943 I am not required to advertise but to take steps of a systematic nature to ensure that vacancies are widely known. In our Services we have a large number of good and reliable personnel of all communities who, I have no doubt can be trusted when asked to bring to the notice of suitable persons of their communities that vacancies exist. The systematic steps to ensure that vacancies are widely known when they occur and the methods of securing the personnel to fill vacancies that may occur will therefore be as follows:

(1) Wardens Service

The Staff Officer of the Sub-Area when vacancies occur will request the Post Wardens and through them the Sector Wardens of the locality where the recruits are required to try and find suitable candidates of their respective communities. e.g. Muslim wardens will be asked to find Muslim candidates, Hindu wardens to find Hindu candidates and so on. The candidates will then be interviewed by the Staff Officer who will give the Head of the Service a list of those candidates who prima facie appear qualified on the broad grounds of residence in the locality, education and character. The Head of Service will as soon as feasible interview the candidates and decide finally who are fit for appointment. Amongst those found fit for appointment, preference in making the actual appointment must be given to Muslims and Scheduled Castes. Where the number of fit candidates exceeds the number required for immediate appointment those not appointed will be put on a waiting list from which subsequent vacancies will be filled. A record must be kept in the Post showing that the existence of vacancies had been brought to the notice of the post and sector wardens of all communities and that they have been asked to find candidates from their respective communities. This will be in the form of a written order from the Staff Officer which the

Post Warden will explain to all the wardens of his Post (conveniently at the morning Post parade) and obtain their signatures in acknowledgment. This record must be preserved at the sub-area Headquarters for inspection by inspecting officers, and will in any case be useful if further arguments or questions arise on the subject of recruitments to the A.R.P. Services in Calcutta

(2) First Aid Posts

Similar procedure to that described for Wardens will be followed in recruiting F.A. Post personnel. When vacancies occur in the Post, the Medical Officer in charge will ask the personnel of the post to try and find suitable candidates from their respective communities. He will make a list of candidates prime facie suitable on the broad grounds of residence, education and character and the O.C. Casualty will interview these candidates as soon as feasible following the same procedure as laid down for Wardens.

(3) Mobile Casualty Service

The same principles will be followed. In this case O.C. Casualty will select a sufficient number of suitable personnel in his mobile Services representing every community to try and find candidates from their respective communities. (Suitable personnel for this purpose would be Medical officer, Group Leaders, First Aid Party Leaders, but it is open to O.C. Casualty to utilise others as well).

(4) Communications Service

The same principles will be followed. O.C. Communications or Deputy O.C. Communications will see that vacancies are made known through sufficient selected personnel representing all the communities and they will be asked to try and find suitable candidates from their respective communities.

In all the above case I shall expect Heads of Services to be able to show on record if required that these instructions have been followed and that in accordance with Government's Orders a genuine effort has been made to find suitable Muslim and Scheduled Caste candidates.

(5) Rescue Service

O.C. Rescue has his own method of recruitment which has worked successfully for over a year in securing not only efficient personnel but over 60 per cent Muslims. It is open to O.C. Rescue to continue his present method or to adopt the principle laid down above.

7. Any persons seeking to join the A.R.P. Service as a member of any political party whatsoever must be rejected. There is no room or use for politics of any kind in the A.R.P. Service of Calcutta. We require in the Service qualified citizens of Calcutta who join as citizens only for the purpose of serving the rest of the population in the A.R.P. Service. Any person joining as a citizen who is subsequently found to be using his position in the service for carrying on political activities must be reported to the Head of Service who will place him under suspension and refer the case to me for orders.

8. Members of the Communist Party in India have been trying to get themselves enrolled as volunteers in the Wardens Service in groups and specifically as members of the Communist Party under the order of their party leaders. They have also taken certain action calculated to cause dissatisfaction in the service and to prejudice the discipline of the Service. It is further

evident from leading articles in the Party's paper, *The People's War* that their object, is to disrupt the organisation and utilise it for their own purposes. Since they have shown this to be their attitude, I direct that members of the Communist Party are not be accepted as recruits in the A.R.P. Services in Calcutta, whether as paid personnel or as volunteers. When interviewing candidates and making selections appointing officers will please pay attention to this. Persons who after joining are found to be members of the Communist Party and are using their position in the service to carry on political activities or attempting to cause disaffection must be reported to the Head of Service who will place him under suspension and refer the case to me.

9. The instructions in this note apply to recruitment to the various services in posts other than officers of command. From this date except for special reasons such as purely technical qualifications (e.g. in the appointment of Medical Officers) no direct appointment will be made to offices of command. These posts will be filled only by promotion from among existing members of the services. Promotion will be made on merit, subject to Government's direction that every endeavour should be made to give preference to Muslim and Scheduled Castes. Heads of Services will therefore in submitting proposals to me for promotion to offices of command carefully bear this in mind and act on it.

10. There has been comment in the Press as a result of a letter from a Member of the Communist Party of India on the recruitment of volunteers to the Wardens Service. Certain Staff Officers Wardens are said to have stated that at present further volunteers in the Wardens Service were not required. If they said so they were perfectly correct and I record this paragraph to put the question beyond doubt for the guidance of officers concerned with recruitment. From experience gained in exercises and in raids I, as the officer responsible to Government for the working of the A.R.P. Services in Calcutta am satisfied that our whole time paid wardens organisation as now sanctioned is adequate for what is required from the Wardens Service and there is every reason to suppose that it will continue to be adequate. Even if it were not, experience has shown that we can expect little help from volunteers. In spite of appeals and the widest possible advertisement for volunteers for over a year we had on our roll of volunteers wardens 1205 just before the raids of Christmas week. 11 of these were under orders to report at their posts and do their duties when the siren sounded. On an average during the five raids in Christmas week only 430 of this 1205 turned out for duty. Amongst other things this meant that the time spent by officers and instructors in training 775 volunteer wardens had been wasted. Although we do not require any more volunteers in the Wardens Service or in any other Service, we do require a very large number of volunteers for the House Protection Fire Parties. This is work of great importance during raids and is particularly suited to volunteers. The House Protection Fire Parties are entirely a volunteer organisation.

Therefore persons applying to join the A.R.P. Services proper as volunteers should be informed that at present no more volunteers are required in these Services but thousands are required in the House Protection Fire Parties. If they are willing to join these parties and take their initial training at local training centres they should be directed to give their names in at the wardens post nearest their residence when arrangements will be made as soon as feasible either to attach them to House Protection Fire Parties already formed or to form them into new parties.

11. These instructions have been recorded at some length in the hope that they will be the final instructions on the subject of recruitment to the A.R.P. Services in Calcutta. They

are for official use only and for the guidance of Heads of Services, Wardens staff Officers and Medical Officers in charge of First Aid Posts.

A.S. Hands
A.R.P. Controller, Calcutta
21st January 1943.

Deputy Controller (32 copies for O.C.'s wardens and Staff Officers.)

O.C. Rescue (2 copies).

O.C. Communications (10 copies for Dy. O.C. and O.C.'s Report Centres.)

O.C. Casualty (40 copies for N.O.'s of First Aid Posts)

O.C. Depts (2 copies.)

Memo. No. 233(5)d 20th January 1943 to Mr P.D. Martyn Joint Secretary Home Department for information.

[Routine marginal note by P.D. Martyn – Ed.]

Regarding para 8 papers have been referred to Add. Secy. I have spoken to him. The matter has been referred to D.I.G. – Put up on return of those papers. Regarding 10/ extract to the file & put up.

P.D. Martyn
23.1.43

1 Not Printed.

13: Official Noting on *People's War* and Mr Gladyshev's *Messages to Russia* (extracts)

File No. 7/1/43 – Home Poll (I)

[NAI]

This is rather a peculiar case. (Refers to Gladyshev's message – Ed) *People's War*, though it has become increasingly inflammatory in recent issues, has not as far as I am aware much of a circulation and the effect of its writings in India is probably not very great. But being a Communist organ it naturally attracts Mr Gladyshev's attention and there is undoubtedly a danger that unless some brake can be put on the paper, its views are at times going to cause some embarrassment when cabled to Russia. For example. *People's War* has lately been preaching the need for political unity in India in order to resist fascist aggression and help Russia and linking up with this the argument that unity is also necessary in India's struggle for freedom against British Imperialism. The paper also is in the habit of referring by and large to all opponents of communism including sections of Congress as 'Fifth columnists'. A term which unless properly explained in this context is apt to be misleading to newspaper

readers outside India. Mr Gladyshev unfortunately does not seem to grasp the technique of this and other Communist journals and I suggest that apart from any action we take to induce 'Peoples War' to moderate its tone (which it is not likely to do) further effort might be made to educate Mr Gladyshev. Perhaps Col. Wheeler can help us here.

B.J. Kirchner
21.1.43

14: News item in *Daily Worker* (London)

Daily Worker

[NAI - MF Acc. No. 2430]

India Workers and Peasants Organise to Meet Jap Danger

In India's easternmost provinces, Bengal and Assam for months threatened with Japanese invasion, the workers are not only straining every nerve to increase War production, but are also co-operating with the Kisan Sabhas (Peasant Unions) to form armed People's Defence Brigades.

Hindu and Moslem workers participate jointly in these activities.

A vital war material produced by India is jute. To increase their profits, the Bengal and Assam jute employers organised in the Indian jute Mills Association cut production 20 per cent last August and stood off 8,000 workers.

Serious Situation

To deal with this situation the General Council of the Bengal Trades Union Congress passed a resolution urging the Bengal Government to realise the seriousness of the situation and appoint a joint committee representing employers, workers and the Government to investigate conditions in the jute industry, prevent the laying off of workers and to introduce a uniform standard of wages.

'This is imperative', said Congress if production for the fight against Fascism is not to be impeded.

Following this, workers in the jute mills elected committees to co-operate with the employers to find ways of increasing production.

Speedier Conversions

The Bengal Railwaymen's Federation met at the same time to demand speedier conversion of railway shops to war production, military training of the workers and increased pay to offset the rise in the cost of living.

'Only a well-fed people can defend the country, one delegate said.' Only training in the use of arms will raise the morale of the workers'.

Significant defence measures taken by workers and peasants have gone farthest in Chittagong, nearest city in India to the Japanese armies, and the point from which General Wavell started his offensive last month.

Hindu-Moslem Unity

When the city was severely bombed last May 9 the president of the local Dock Workers Union Golam Sarif was killed.

Immediately a district organising committee of five-members three Hindu and two Muslim was formed to recruit people's Defence Brigade.

Within two weeks the brigade numbered 2,000, 25 per cent of whom were Moslems. In the face of the common danger, unity between the Moslem majority and Hindu minority was complete.

People's Committee

At the same time a people's Committee was formed by the trade union and Kisan Sabhas to organise co-operative stores for the sale of rice, salt and kerosene to prevent profiteering get arms from the landlords and the Government and give the people military and political training.

More than 20,000 have been mobilised.

It has obtained semi-official recognition and its influence in the community is such that it now handles all legal disputes.

Main Task Today

Its main task today is to increase production of food and war materials for the United Nation's Armies.

Last month enemy agents spread a false alarm that a force of 6,000 Japanese was on its way to attack Chittagong. While 10,000 workers and peasants rallied to defend their homes, local Government officials ran to the station to catch the outbound train.

The People's Committee prevented the train from leaving.

15: Official Note from A.R.P. Controller to the Joint Secretary — A.R.P. recruitment (dt 24.1.1943)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

I recently handed to J.S. a note on the activities of the Communist party with reports of what they had been doing to cause disaffection in the A.R.P. Service in Calcutta.¹ This was shortly after the *Statesman* had published a letter from Somnath Lahiri² complaining that he had not been accepted as a volunteer. For some days after that the *Statesman* continued to give space in its column for this agitation.

2. I now enclose a copy of 'Janajuddha' 2 the Weekly organ of the Bengal Committee of the Communist Party dated 13th January³ 1943 with a translation of two articles in that issue. (The translation was made by Mr Ghoshal.) I request that action may be taken to stop the publication of this sort of stuff both in the *Statesman* and in *Janajuddha* because it is prejudicial to the working and discipline of the A.R.P. Services under my commands.

3. In my note I suggested that Government should publish a statement of the facts in the leading papers of Calcutta including the *Statesman*. I think this is still necessary

4. As far as I am concerned as A.R.P. Controller the stuff published in the *Statesman* and in *Janajuddha* raised two problems which had to be settled for the guidance of my officers. One was the question of enrolling more volunteers. The other was the question of what attitude we should adopt towards members of the Communist Party seeking to join the A.R.P. Services. I have disposed of both these questions as far as I and my Services are concerned in my Memo. No. 223 A.R.P. dated 20th January 1943 of which I enclose a copy.⁴ As the first paragraph of the Memo. shows it deals with Government's latest orders about recruitment to the A.R.P. Services (dated 8th January 1943) and with the question of volunteers and Communists.

5. The relevant paragraphs of the Memo. dealing with Communists and volunteers are paras 7, 8, and 10. The instructions in paras 7 and 8 are in accordance with the orders of Government to the effect that the political affiliations of individuals can have no place in the A.R.P. Services and that the Controller will ensure that the organisation is not captured, run for the benefit of any political party.

6. The instructions in para 10 do not entirely agree with the statement made by the Hon. Member for Civil Defence, Government of India when he appealed on 27th November for more volunteers for the Wardens Service and for the House Protection Fire Parties. The effect of the Hon. Member's appeal on recruitment of volunteers was nil except for Mr Somnath Lahiri who applied to join, not immediately after the Hon. Member's speech, but immediately after the Christmas raids, in his capacity not as a citizen but as a member of the Communist Party of India. The position has changed since the Hon. Member made his appeal. We have had raids, and as I have pointed out in para 10 of my Memo., as a result of that experience I as the officer responsible to Government for working the A.R.P. Services in Calcutta, am satisfied that we do not require any more volunteers in the Wardens Service or in any of the other A.R.P. Services proper. But we do require, as the Hon. Member pointed out thousands of volunteers in the House Protection Fire Parties. This is work of the greatest importance particularly suitable to volunteers because (a) the essential training does not take long, and (b) the work in raids is confined practically to the house and the immediate adjoining houses where the volunteer resides. If there are in fact thousands of patriots who honestly want to do essential volunteer work in air raids there is ample scope for them in the House Protection Fire Parties. Our experience in many cases has been that members of House Protection Fire Parties will not take the trouble to take their six hours initial training unless an Instructor actually calls at their house. When he calls he is often told that A or B is away and will he come another day. Although we arranged courses of training at Depots many of the parties refused to take the trouble to attend them. The trouble of training volunteer wardens is of course much worse. I know that it looks attractive on paper to have thousands of volunteers but what we want are people who obey orders do their training, and turn out for work on the ground during raids. J.S. will recollect that when Hon. Member told us what a valuable lot of volunteers there were among the wardens in Lahore, Brigadier Reeve, Director of Training, pointed out that they had not yet even done their individual training stage 2.

I am aware that it may be argued that there must be room for volunteer building wardens. My reply to that is that House Protection Fire Parties who are doing their job honestly and

assiduously will automatically do all that is required of building wardens and will in fact be building wardens as well.

A.S. Hands
A.R.P. Controller, Calcutta
24.1.43.

Home Department.
(Mr Martyn).

1. Doc. 12.
2. Doc. 2.
3. Doc. 10.
4. Doc. 12.

16: Olaf K. Caroe's views on Indian Leftists

File No. 7/1/43 – Home Poll (I)
[NAI]

25.1.43
Home Dept. (Sir Richard Tottenham)
E.A. Dept. (Mr O.K. Caroe)
Copy U/o No. 364/43 dt 22.1.43

It would be interesting to know the nexus if any between P.C. Joshi (organ 'Peoples War') and the FSU (organ 'Indo-Soviet Journal'). Most of Comrade Gladyshev's instruction of the last few weeks has, I think come from the latter. It might be worthwhile trying to give Comrade G. some reasoned picture of the various squabbling fermenting frothy elements that make up the Leftist wing of political India. He would probably realise that they are more like a cocktail than a chemical compound.

O.K. Caroe

17: News item from *Daily Worker* (London) (dt 26.1.1943)

Daily Worker
[NAI – Acc. No. 2430]

Make India Fighting Ally: Amery Must Go

India's Independence Day. January 26 is a reminder to democratic opinion in this country of our responsibility in relation to the 400 millions of India' said R. Palme Dutt, Speaking in Sparkbrook, the Birmingham constituency of Mr L.S. Amery. Secretary for India yesterday.

‘In India as in Western Europe, 1942 was a year of lost opportunity. We must not repeat these mistakes in 1943. The winning of the co-operation of a free India is a vital part of a united strategy for victory’, declared Mr Dutt.

‘The present situation in India is a condemnation of the policy of those in charge. Six months of violent repression with the number killed by shooting estimated to run in several thousands; economic crisis, famine in many areas and hunger riots, political deadlock and military danger weakening the whole front against Japan — this is the out-come of the policy of Mr Amery as Secretary of State for India, and Lord Linlithgow as Viceroy.

‘The electors of Sparkbrook will not forget that it was Mr Amery who defended Japanese aggression in 1933 and declared that I see no reason why either in act or in word or in sympathy we should go, individually or internationally, against Japan in this matter . . . our foreign policy in India stands condemned if we condemn Japan.

Replace Amery

‘The pro-nazi broadcast of his son Mr Amery junior cannot do one hundred part of the damage to the cause of the United Nations as is being done by the policy of Mr Amery Senior as Secretary of State for India. Amery must go. Linlithgow must go.

‘Let them be replaced by democratic anti-Fascist representatives of the British People, charged with one task to open immediate negotiations with Indian political leaders for the formation of an Indian National Government with full powers as a free ally of the United Nations.

18: Government of India to all Provincial Governments regarding ban on Communist literature

Govt. of Bihar Pol. (Spl) File No. 55/1943
[Bihar State Archives]

No. 41/6/42 – Poll (I)
Government of India
Home Department

New Delhi, the 30th January, 1943

To
All Provincial Governments and
Chief Commissioners

Memorandum

Reference Home Department Letter No. 32/3/36 – Political dated 16th January 1937, regarding disposal of telegrams to and from certain objectionable sources. Central Government have cancelled their notification No. 61, dated 10th September 1932, known as the general communist notification, which prohibited the bringing into British India of literature emanating from the Communist International, &c., and have issued another notification prohibiting the

bringing into British India of literature of the nature described in subsection (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931. Practical result of the change will be that action in future will be related to contents of literature rather than its source of origin.

Secret.

Circular Memorandum

Attention is invited to the Government of India, Finance Department (Central Revenues), Notification No. 1, dated January 2nd, 1943, which cancels the General Communist Notification (No. 61, dated Sept. 10th, 1932). Notification No. 3 dated the 21st January 1943 which prohibits the entry into India of documents offending against the provisions of Sec. 4(1) of the Indian Press (Emergency Powers) act of 1931, has been designed to take the place of the General Communist Notification.

2. It will be observed that the new notification is wider in scope than its predecessor inasmuch as it is not confined to communist propaganda and establishes the verbal content, and not the origin of a publication, as the sole criterion for banning it. Apart from its invidious mention of the Communist International (Whose separate existence from the Soviet Government, although claimed, is hardly distinguishable), the old notification had become largely out of date in its stress on the Comintern as the fountain-head of a world-wide campaign of revolutionary propaganda. There are, for instance, many publishers and writers of objectionable communist literature who cannot be proved to be connected, even indirectly, with the Comintern; and, as time goes on, this state of affairs is likely to become more pronounced as left-wing groups in the various countries develop their own propaganda machinery. Accordingly, the lists enclosed with our Cir. No. 11/Bol/36, dated January 22nd, 1937 (as amended from time to time) may now be considered as cancelled, as the great majority of the organizations mentioned in them as coming within the scope of the General Communist Notification are now defunct or moribund; under present conditions and in view of the fact that publications can no longer be withheld merely because they originate from a particular source, these lists no longer serve any practical purpose. (Similar remarks apply also to those sections of the lists which refer to the Ghadr Party). We will however continue to issue periodical circulars indicating those booksellers, publishers and authors whose works require careful examination under the new notification.

3. In the meantime, publications already circularized as objectionable under the General Communist Notification should continue to be withheld under the new notification. As we have indicated from time to time in circulars on this subject, our interpretation of the ban on communist literature has always tended to become more liberal, a tendency which has been considerably accelerated since Russia's entry into the war on the side of the United Nations; for some time past we have ceased to exclude books devoted to discussing the theory and practice of communism from a purely scientific or philosophical viewpoint, irrespective of their origin. The new notification is designed principally to prevent the import of books which advocate mass armed rebellion and which might serve as practical handbooks on revolutionary tactics or be used to develop an organised underground revolutionary movement in India; but it equally covers books advocating race or class hatred with a view to the 'liquidation' of certain races or classes by violent means, the advocacy of subversion of the armed forces with the object of fomenting mutiny when the time is ripe for a full-dress rebellion and the vilification of the British 'imperialistic' system. At the same time, some professedly anti-Fascist literature

is objectionable for the reason that it portrays the British 'ruling classes' (and by implication the Indian Government) as closely in sympathy with Fascist ideals; as some professedly communist books and pamphlets on the war which are without question perversely defeatist in tone and unnecessarily critical of the Allied war effort, should not escape attention. Whether accounts of the Russian Revolution and the Paris Commune of 1871 are suitable or not for circulation in India can only be decided by examination. If they take a detached view of the subject, treating it from a purely historical angle, well and good; but if they enter into minute details of plotting and tactics they are clearly to be stopped. Some Bolshevik memoirs are dangerous from the latter aspect. A few of the communist 'classics' may be permissible. They are often extremely long-winded and tedious to read and rarely contain more than a few crumbs of instruction in revolution—so few indeed that the average Indian communist would find it hardly worth the time and labour involved to look for them. All these considerations are of course subject also to the limitations laid down in the 'explanations' contained in Sec. 4(I) of the Press Act.

4. In the case of periodical a somewhat different treatment is called for. It is not always practicable to examine every issue in the light of the above principles, and where a periodical, such as, for instance, the 'World News and Views', has over a long period of time habitually expressed extreme opinions it may be advisable to discourage its circulation by withholding all copies.

5. In accordance with our Cir. No. 20/Inter/36, dated December 23rd, 1936, certain police officers have been authorized, under Rule 221 of the Indian Post Office Rules, 1933, to take delivery, from the postal authorities on behalf of the Director, Intelligence Bureau, of all material seized under Section 25 of the Indian Post Office Act; this rule also applies in respect of the new notification, but in order to ensure uniformity of judgment in decisions of a somewhat delicate and complicated nature (which may be powerfully influenced by rapid changes in the international and internal situation); it is desirable that the Director, Intelligence Bureau, should as before remain the final arbiter whenever doubts arise as to the treatment that should properly be accorded to a publication. We therefore urge that all doubtful cases should as hitherto be referred to the Bureau for a decision and that Special Branches should not concur in the confiscation of books withheld under the new notification unless they have been specifically circularized as objectionable. At the same time, the principles set out above will more often than not enable special Branches to advise local postal and customs authorities when a new book can be safely regarded as harmless.

6. As a consequence of the increasingly liberal standards adopted in interpreting the notification of 1932, many books which we have condemned in the past might well be found now to be suitable for circulation in India; such books are re-examined from time to time as they come to notice, but since the total number involved is well over a thousand the process of circularizing them as fit to be passed must necessarily be a slow one. Many pre-war books, more over, are no longer on the market and it is obviously impracticable as well as unnecessary to re-examine them at present. We shall therefore be grateful if Special Branches will make a reference to us when they encounter books which have formerly been classed as objectionable and which now appear to merit reconsideration. In this connexion we would particularly invite attention to works by Lenin, Stalin and other prominent Soviet leaders, which have been extensively banned in the past, if they continue to reach India in any quantity.

7. Although the new notification is designed very largely to exclude objectionable communist propaganda, the wording of Sec. 4(I) of the Press Act is sufficiently wide to embrace

all types of subversive literature. Examples might comprise pacifist and Fascist propaganda, books on Indian topics written by foreign writers or Indian exiles, and pamphlets produced by various Indian Associations abroad. These cases however will probably not be numerous.

8. We recommend that liberal standards should also be applied in the matter of confiscating intercepted consignments of literature. Under Sec. 19-4 of the Sea Customs Act, read with Section 168 of the Act, the whole of the contents of a package may be confiscated; but it has long been our practice to allow importers to take delivery of the unobjectionable portion of the contents when it comprises 60 per cent. Or more of the total, on the assumption that in the case of reputable firms the books were ordered under a misapprehension, and this policy will be maintained. In cases of this kind Special Branches will be able to advise the Customs authorities about the reputation and *bona fides* of an importer.

9. Lastly, we invite a reference to our Circular No. 20/Inter/36, dated February 8th, 1937, in which we asked that details of intercepted literature should be published in Secret Abstracts. We would now request that in order to avoid oversights, delays and complaints, such statements should be published in the first issue of your Secret Abstract every month. If no literature has been intercepted a note to that effect should be made in the issue.

J:N: 29/1.

Enclosure

Copy of Finance Department (Central Revenues) Notification, dated the 2nd January 1943.

No. 1 — In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), the Central Government is pleased to direct that the notification of the Government of India in the Finance Department (Central Revenues) No. 61 — Customs, dated the 10th September, 1932, shall be cancelled.

Copy of Finance Department (Central Revenues) Notification, dated the 21st January 1943.

No. 3 — In exercise of the powers conferred by section 19 of the Sea Customs Act, 1878 (VIII of 1878), the Central Government is pleased to prohibit the bringing into British India of any document containing any words, signs or visible representations of the nature described in sub-section (1) of section 4 of the Indian Press (Emergency Powers) Act, 1931 (XXIII of 1931).

19: Official Noting on A.R.P. recruitment (dt 30.1.1943) (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

The Controller, Calcutta, has raised the question of the recruitment of members of the Communist Party in India to the A.R.P. services in Calcutta and has linked with it the question of the recruitment of volunteers to the Wardens Service. The two problems are quite distinct, although in the circumstances described by the Controller they are very closely connected and for convenience can be dealt with together.

2. Taking first the statement of the Controller that he does not require any more volunteer wardens. I discussed this with him and pointed out that though from a strictly operational

point of view, based on experience gained from the few light raids that have occurred upto date, the statement is probably correct (i.e. the Wardens Service has been able to manage perfectly satisfactorily with the numbers that have already been enrolled), whether the numbers would be sufficient from an operational point of view, if the raids became both heavier and more frequent is another matter. From a political (using the word in its widest and best sense) point of view and having regard to the duties that have to be carried out by the Wardens at time other than raids, it can, I think, be regarded both as undesirable as well as unwise for Government to announce at this stage that they do not require any more volunteers.

3. Throughout it has been made clear — the latest official announcement being the note that was sent by this Government to the Government of India for circulation to representatives of all Provinces at the Civil Defence Conference — that it is the policy of Bengal to recruit volunteer wardens wherever possible (1) so long as they are of the right type, and (2) so long as they are prepared to undergo intensive training and participate with the paid personnel in their duties during air raids. Wardens who are not prepared to undergo systematic training are not encouraged.

4. This is a perfectly logical and understandable position to take up and one which could be defended by H.M. in the House and on public platforms and can form the basis of all publicity and propaganda. Further bearing in mind the work which the wardens, volunteer or paid, are supposed to do as men of influence, courage and personality in pre-raid times as also in post-raid times (a short analysis of the work of the warden will be found in the Lecture Notes for the Special Training of Wardens — particularly Lecture II — copy placed in the file) it is clear that Calcutta with approximately only a thousand volunteer wardens, only 400 of whom really function, cannot possibly be regarded as having reached the satisfaction point. Assuming that wardens of the right type are available, the opportunity for pre and post-raid duties (quite apart from raid duties) is limitless, and Government cannot possibly take up the attitude that they have no need of such assistance. The Controller himself even a few days before his present note did not take up this attitude regarding the recruitment of volunteers, and in fact when the matter was discussed with him very recently after his note now under consideration was written agreed that if volunteers of the right type were available they would be valuable.

5. I am quite sure myself that while refusing most strongly to accept the inflated figure of 13000 volunteer wardens laid down in the original Govt. of India sanction, it would be equally unwise on our part to ignore from now onwards all possibility of obtaining volunteers of the best type to perform the most important duties that have to be performed by wardens. The Wardens Service, which above all appears to the public and symbolises for them A.R.P. can be made to function satisfactorily given the right conditions — as witness Howrah. We have always found the volunteer wardens a problem in Calcutta for a variety of reasons — that is no reason, however, why we should officially and for ever abandon all hope of getting men of the right type. Recruits are badly wanted for the House Protection Fire Parties, but however their duties may be enlarged they are not wardens and cannot have the scope of the warden.

6. The fact that there has been a certain amount of panic and loss of morale following the first light raids reinforces the argument for wardens of the right type, whether volunteer or not. The measure of the extent to which there is panic and loss of morale is the measure of the extent to which the wardens are unsuccessful.

7. Turning now to the question of the recruitment of Communist Party personnel—it is to be clearly understood and in fact it is well known to all Controllers, that persons are not to

be recruited to the A.R.P. services as members of a particular political party or organisation. The question now arises whether a step further should be taken so far as the Communist Party in India as concerned and it should be laid down that in Calcutta the members of the C.P.I. should not be admitted even as private individuals. I agree with the Additional Secretary that it is undesirable and impossible for us *formally to announce* that persons who may, in politics, belong to the Communist Party in India but who desire to join as private citizens should be prevented from doing so. Though the above should be our formal policy and a blunt negative to their efforts to join would be unwise, we clearly do not want to embarrass the Calcutta organisation by the presence of people who might cause trouble by giving vent to or even manufacturing grievances. How far such persons if they did join would in fact be able to cause trouble in the organisations is difficult to assess. It can be strongly argued, however, that it is at this stage undesirable to give such persons a footing in the organisation. In Howrah, where the Dist. Magistrate is in any case doubtful of the harm that the Communists could or would be able to do, the organisation is in a strong position because there the entire volunteer service is full, including reserves, and any Communists who have desired to join have been invited to become fire watchers.

8. To avoid embarrassment to the Calcutta organisation I suggest that a similar procedure should be adopted in Calcutta and that it should be indicated to the controller that if in the course of the investigation which they set on foot on receipt of applications it is found that a person is a communist, such person should, unless there are particular reasons to the contrary at the discretion of the Controller, be invited for the present at least to join the House protection Fire parties on the ground that recruits are urgently needed, that the work is of particular importance and that there is no chance at the moment on account of the necessity for training and dealing with duly recruited paid personnel of taking him in the Wardens Service as a volunteer. If the persons do not join the House Protection Fire parties, both Government and the controller will be in a strong position in dealing with any subsequent representations that may be put in.

C.C.D.C. and C.S. may see before this goes to H.M.

P.D. Martyn
30.1.43

J.B. Blair
1.2.43

I agree with Joint Secretary. H.E. may kindly see.

S.K. Basu 2.2.43

H.E. has seen

Williams
9.2.43

Controller may see orders of Govt. about approving of the suggestions summarised in paras 5, 6 & 8 of my note of 30.1.43.

Signed P.D. Martyn
10.2.43

Controller, Calcutta

I am sorry, but I am perfectly clear what the orders of Government are. Is the following correct?

Volunteers

Any person seeking to join an A.R.P. Service as a member of a political party is to be rejected

Any person of the 'right type' seeking to join as a volunteer is to be accepted provided he is not seeking to join as a member of a political party. The decision as to what is 'the right type' rests with appointing authority.

Communists

Communists who seek to join an A.R.P. Service as Communists should be refused.

If in the course of enquiry into an application it is found that the applicant is a communist, his application should be rejected and he should be invited to join the House Protection Fire Parties.

This seems to me to be the same as the directions in my orders of 21st January 1943, except that instead of rejecting the man on the ground that at present no more volunteers are required, we shall have to reject him on the ground that he has been discovered to be a Communist.

2. As the question is evidently an important one both as to the policy to be followed towards intending volunteers and towards Communists, I shall be grateful if I may be issued with formal orders.

A.S. Hand
A.R.P. Controller, Calcutta

Home Department (Mr Martyn)
12/2

Notes from p. 13; The Controller's circular is follows:

1. I have prepared a draft [not printed – Ed.] which has been seen by the Controller. He has no comments.
2. A copy of the adjournment motion has been placed on the file. It has been emphasised in the draft (a) that volunteers *of the right type* are required and (b) the members of the political parties who try to join *as members* will not be taken in.
3. Intimation has now been received that the adjournment motion has been disallowed

P.D. Martyn,
16.2.43

Will H.M. (CDC) please let me have his views.

Fazlul Haq
19.2.43



20: Official Notings regarding the Russian Journalist Gladyshev (dt 4.2.1943 to 12.2.1943) (extracts)

File No. 7/1/43 – Home Poll (I)

[NAI]

D.I.B.

H.D. U/O No. 7/1/43 – Poll dt 28.1.43

The 'Indo-Soviet Journal' is published in Calcutta. Its editor is S.K. Acharya,¹ an obscure Bengal communist, who is a member of the Bengal Friends of the Soviet Union and Joint secretary of the A.I.F.S.U.² He was elected as a member of the 'Goodwill Mission to Russia'. The journal has published some of Gladyshev's articles, and Acharya was recently the recipient of a cable from the 'Foreign Committee of the Union of Soviet Writers', Moscow, the contents of which are not known; he intends to bring out Bengali and Hindi editions of the 'Indo-Soviet Journal' in the near future. The telegram of Gladyshev which was condemned on January 5th quoted from an article from the 'Indo-Soviet Journal' written by Professor Hiren Mukerjee,³ a Bengal communist and secretary of the A.I.F.S.U. who also intended to accompany the 'Goodwill Mission'. Acharya is not known to possess any resources of his own⁴ and it seems very likely in view of his communist connections – C.P.I. practically controls the F.S.U. – that the 'Indo-Soviet Journal' is being financed by the Communist Party of India, although we are making enquiries in the matter.

Incidentally, we have seen a secret report that the C.P.I. has instructed provincial branches of the party to have nothing to do with the 'two Russian editors' of the 'Soviet Union News' on the grounds that they are not true communists but British agents. The 'two Russian editors' presumably refer to Mr Vladimir Shibayev and the Russian lady a naturalised British subject who assists him.

G.C. Ryan

4 2.43

H.D. (Mr V. Sahay).

D.I.B. U.O. No. 21/Vol/42, dated 9th February 1943.

This might go back to E.A.D. after C.P.A. has seen. I presume EAD will arrange for the further education of Mr Gladyshev.

V. Sahay

9.2.43

C.P.A.

Seen thanks. I have taken up the case of the 'People's War' at some length in another note which is now with Home Department.

B.J. Kirchner

11.2.43.

External Affairs Department.
CPA U/o No. 775/43. dt 11.2.43

Col. Wheeler should see. We had better extend an embrace to 'People's War'. The 'Indo-Soviet Journal' seems to stand rather on the edge of Indian Communist literature. We are already doing all we can – or rather Col. Wheeler is – to 'educate Com. Gladyshev'.

O.K. Caroe
12.2.43

P.O.F.
E.A. Deptt. U/o No. 346 (P) dated 12.2.43

Mr Gladyshev is at present on a conducted tour in the Punjab & N.W.F.P. I have taken considerable trouble over this and I hope it will bear good fruit.

Will continue to persevere in Mr G's education. Our personal relationships are cordial to the point of being affectionate.

Col. Wheeler
14.2.43

F.S. (Mr Caroe)

— — —
All India Friends of the Soviet Union

The British intelligence system slipped up at this point. Snehangshu Acharya was the son of Mahanaja Shastakanta Acharya of Mymensingh, a very rich landowner noted for his various charities. Apart from being cushioned by family wealth, Acharya was also at this time a promising young member of the Bar in the Calcutta High Court. [See biographical index for a career profile – Ed.]

21: Review of an article in *Janayuddha* (dt 10.2.1943)

Govt. of Bengal, Office of the D.C.P. (Sp. Br) File No. 562/42
[Bengal State Archives]

Special Diary from the Inspector of Section

Under the caption 'Private Commission of the A.R.P. authority', it disclosed a rumour of the A.R.P. circle that the A.R.P. authority decided to stop any further recruitment in the city of Calcutta. The rumour was an alarming one. It demanded to know from the Government whether the rumour was true and if so it was to be understood that the posts of officials had been filled with persons who did not look after the interests of the countrymen nor did they help them. It further demanded to remove the officials if the rumour was true for the interest of the country.

In the editorial under the heading 'Is there no duty of the League in the food crisis', it urged the League to demand for the release of the Congress leaders, so that they could unitedly solve the food problem of the country.

The mazdoors of Victoria Engineering Works Kidderpore demanded an increase of Rs 10 in pay (2) 25% war bonus (3) supply of food stuffs at cheap rate (4) permanent service etc. It requested the countrymen to contribute blood to the Blood Bank. There is nothing objectionable.

Signed

22. Memorandum on A.R.P. to be submitted to the Govt. of Bengal by the C.P.I.

Govt. of Bengal (Home) File No. W/58/43
Bengal State Archives]

Communist Party of India
(Section of the Third, Communist International)
Bengal Committee.

Phone Bz: 2020.
Provincial Headquarters.
249, Bowbazar Street
Calcutta

Dated the 10th February, 1943.

Memorandum on ARP to be Submitted to The Govt. of Bengal, Home Department

The policy of the Communist party towards Civil Defence and A.R.P. in particular is deduced from the Party's general line of National Defence against Fascism. Since the party is pledged to rally the entire people for relentless resistance against Fascism, it stands for the building and maintenance of strong and efficient A.R.P. to which the people are exhorted to offer unconditional cooperation.

Not only in the formulation of policy but by actual concrete work the Communist Party is doing its utmost to help to build a strong and efficient A.R.P., broadbased on popular support. Long before the Party was allowed to function legally, the Communist student volunteers formed themselves into squads popularising the A.R.P. among the people. Very soon after the beginning of the war in the Pacific, they took up this work and did widespread propaganda, asking the people to join the A.R.P. and observe all the A.F.P. rules. They offered themselves for service in the A.R.P. though it must be pointed out that many of the officials had nothing but a antipathic and sometimes hostile attitude towards this move which was inspired purely by the civic sense of service towards the people in times of danger. Our women workers too did considerable propaganda particularly in the bustee areas, for A.R.P. At a time when the entire public was callous about A.R.P. and kept themselves completely ignorant about even the elementary tenets of civil defence, it is the Communists who ceaselessly worked to make themselves A.R.P. conscious. From its very inception, our weekly paper, 'Janayuddha' has paid more attention towards A.R.P. and Civil Defence, than any other newspaper or periodical in the province.

With the onset of the present cold weather Jap bombing becomes imminent, our Party

again concentrated its attention upon A.R.P. The entire rank was asked to join A.R.P. as primary duty. Many offered themselves as volunteer wardens, others took training in First Aid work, while other branches of Civil Defence, like Despatch Rider Service and Post-raid information too were not neglected. Secondly, we organised classes with the object of teaching the lay public the A.B.C. of A.R.P. so that they might prove themselves to be useful and responsible citizens in times of emergency.

During the Christmas bombing, the Communist Party threw its entire energy to fight panic and keep the life of the city normal. It was determined to keep up the morale of the ARP personnel and through its manifestos etc. it exhorted them to stand by their posts. It is open knowledge that a very considerable section of the A.R.P. staff was in a mood to strike for the demand of dearness allowance. But it is mainly through our intervention both inside and outside the A.R.P. that the strike was averted. We did our best to convince the A.R.P. personnel, never even to think of deserting their most responsible work and reasoned with many of them to bring some of their big demand within reasonable bounds. It is clear that such a state of panic and discontent is the happy hunting ground of Fifth Column provocateurs, whose game was mainly foiled through our vigilance and execution. And for the public in general, our main task during these recent days has been to teach them the elementary A.R.P. duties. Our workers also try to popularise the A.R.P. in the various Local Defence Committees which have come into birth in recent months.

It is important — for Government to realise what the A.R.P. would be like without our intervention and cooperation. There is no denying the fact that the people today detest anything associated with Govt. But more than any other department of Govt., Civil Defence depends for its management and efficiency upon active popular cooperation, and this is exactly what the Communist Party is trying to secure for it. The offer of service and cooperation that we offer to A.R.P. entails a considerable sacrifice of popularity on our part, while the Govt. by admitting us into A.R.P. would only be securing for it that measure of popular cooperation which alone would make the running of a strong A.R.P. possible.

But experience has shown us that the A.R.P. authorities are pursuing a a very dangerous game in their dealing with the Communists. More than 70 cases of refusal to admit Communist Party members and sympathizers into the ranks of the A.R.P. as volunteer wardens have so far come to our notice. In spite of repeated appeals, officially and publicly, the authorities have not yet taken them in. Secondly, a number of cases of victimization and warning have been reported, for the offence of being Communists and for having handled Communist Party organ, which is consistently trying to keep up the morale of the people particularly of the A.R.P. Personnel. It has also come to our knowledge that recently a Circular has been issued by the A.R.P. Controller in Calcutta against admitting Communists into A.R.P. and throwing out those who are in its ranks, and also forbidding the recruitment of volunteer wardens. This is indeed serious, and obviously goes against the declared policy of the Government, as announced by Sir Jawala Srivastava, Civil Defence member of the Government of India, who has called up 13,000 volunteer wardens and 40,000 Fire-fighters for Calcutta. In fact it is only through a wide recruitment of volunteer personnel that an active liaison can be formed between the public and the A.R.P., which alone would ensure its strength and efficiency. It is in this way too that the Fifth Column agents can be weeded out of its ranks and the A.R.P. itself would function better broad-based on the much-needed popular support.

But no popular support can be secured, nor could the Fifth Column be thrown out unless and until the present attitude of the A.R.P. authorities is changed. For that there must be an

immediate cessation of Communist-baiting. We consider that unless the Communists are allowed to join and work in the A.R.P., it is not possible for them in spite of the best intentions to draw the general public round the A.R.P. Secondly, as the department most closely in touch with the people, there should be no place for bureaucratic high handedness within A.R.P. In their dealings with their own subordinates many of whom have joined the staff as a civic duty, the officials must behave in a manner that would enlist popular cooperation. Some of the officers seem to be incapable of such behaviour having worked for long in the C.I.D., and burdened with all the traditional prejudices against Communists they are doing their best to throw them out. Thirdly in our considered opinion, the just and legitimate demands of the Wardens should at once be met because only by doing that can the panic and discontent in their ranks could be eliminated and through patriotic exhortations could be inspired to stick to their post during air-raids which may be more frequent and intense in the near future. In short what we want from the Government is not concessions, but the opportunity to work freely and actively in the A.R.P. abiding by its discipline but helping to make it popular and therefore stronger and more efficient.

Muzaffar Ahmad*
Secretary,
Bengal Committee,
Communist Party of India (Section of C.I.)

23: News item in *The Hindu* – Andhra Communist leaders plea to release Gandhiji

Jayakar Collection – File No. 527

[NAI]

Andhra Communist Leader's Plea

Mr C. Vasudeva Rao Secretary of the Andhra Communist Party, in a statement says:

'Gandhiji has clearly shown in his letters that the Congress is not responsible for the anarchic acts after August 9. He has made it plain that the Congress's Bombay Resolution clearly enunciated that the Congress is for fighting the Fascist invaders and he categorically stated that the Congress wanted National Government for effective war effort and winning the war. He exposed the lies widely circulated by Messrs Amery and Co., that the Congress was pro-Axis. It is now for the Government to release Gandhiji and all the Congress leaders who are really anti-Fascist. To continue their incarceration is against the interests of the Allies and detrimental to the world and a people's victory.

'Gandhiji's letters are at the same time a warning to the Indian people that they must desist from all acts of anarchy and sabotage and that a National Government alone can effectively solve the daily deepening food crisis. Therefore we appeal to all the patriots in the country to unite and bring their mass pressure upon the Government for the release of Gandhiji and other Congress leaders. Without them in our midst, we cannot win National Government and without National Government we cannot solve our food problem or prepare and defend our nation against the Fascist hordes.'

24 Extracts from *People's War* — (Vol. 1, No. 43)

P.C. Joshi (ed.), *Correspondence between Mahatma Gandhi and P.C. Joshi* (1945), pp. 52-5

All together . . . for the release of Gandhiji to end the national crisis

Resolution of the Central Committee of the Communist Party of India passed at its meeting February 15, 1943.

A situation of the utmost gravity faces our people to-day. The reckless act of the bureaucracy on August 9 drove the vast masses of our patriots away from the path of National Defence. The treacherous Fifth Column sought shelter in the bosom of patriotism. The conflict between the Government and the people aggravated every problem in the land. Economic dislocation and crisis deepened into a crisis of the barest necessities of life of the people, of food itself.

Starvation and famine face the nation at a time when the ruthless Jap invader is at our doors.

Now or never!

No longer could the nation's leaders behind prison bars continue to be helpless witnesses to this disaster. Gandhiji's fast is a desperate call to the entire nation to wake up before it is too late and unite to save itself from utter extinction.

The same hands that locked the jail gates on the nation's leaders on August 9, refuse to unlock them now. The life of the nation's foremost leader is in peril. His call for settlement the only way out, is turned.

The crisis is deepened a hundredfold

It is 'Now or Never' for our entire nation. We either get Gandhiji out and solve the crisis; or we sink in it deeper still irrevocably, and helplessly get carried on by it from the arms of one enslaver into those of another.

Whether we can get Gandhiji out or not today-on this depends whether our entire nation passes from crisis to salvation or to death.

A rebuff to slanders

Gandhiji's statements have swept away every obstacle, every prejudice, that stands in the way of our great patriotic parties uniting among themselves and with the peoples of the United Nations.

He has answered back all the slanders hurled against our national movement by the bureaucracy and has reaffirmed the staunch anti Fascist stand of the Congress. He has categorically disowned sabotage and anarchy on behalf of the Congress. He has revealed that the Congress was on the eve of new negotiation with the League prior to August 9; he has indicted the Viceroy for blocking Rajaji's efforts of interview him after his talks with Jinnah.

He has opened the door wide for settlement with the League for united negotiation with the Government.

Viceroy's challenge

The Viceroy's 'No' to Gandhiji shows the length to which wooden-headed reaction can go. They don't want settlement with the Indian people; they want our downright surrender.

Every patriotic party, every patriot should wake up and see where this policy leads our nation. The Viceroy's 'No' to Gandhiji is not a mere private quarrel between the Congress and the Government. It is an ultimatum delivered to every patriotic party, to our entire nation—either surrender or nothing.

Accentuation of the misguided struggle against the means of our National Defence; new lease of life to the Fifth Column just at a time when its whole political basis has been knocked off clean by Gandhiji's statements; deepening of the food crisis into famine and food riots—this is what await our nation if the Viceroy's 'No' is allowed to stand.

India's gates would be left wide open and the Jap invaders could walk in anytime it suited them.

Bureaucracy on last legs

The glorious traditions of our patriotic national parties, the sound patriotic instincts of our great people, cannot look on in passivity and silence before this shameful prospect. Out of this very prospect itself out of the present die-hard stand of the Viceroy has opened out the biggest opportunity for our nation.

Never before has the reactionary Bureaucracy isolated itself so completely from every section of Indian public opinion, from every section international public opinion. All the slanders of Amery and Co. against the Indian people, fabricated to isolate them from their international allies, are being blown up. All the barriers of misunderstanding and prejudice between the Congress and the League are being removed.

The movement for the immediate and unconditional release of Gandhiji as the only way of ending the crisis has already begun to sweep all over the land. All patriotic organisations and associations are coming into it. From the threatened province of Bengal has come the most inspiring example of a united lead — the demand of the Bengal Legislative Assembly for Gandhiji's release, a demand supported by all parties including the Muslim League and the Hindu Mahasabha. The coming Delhi conference should rally the biggest mobilisation of united Indian public opinion.

Unite to stop sabotage

At this critical hour in the destiny of our beloved Motherland the Communist Party appeals to every patriotic brother party, to every patriotic son and daughter of India:

All unite and win Gandhiji's release and end the crisis! In the name of Gandhiji stop sabotage and smash the Fifth Column!

We appeal to all our brother congress patriots. From behind prison bars Gandhiji has disowned sabotage and anarchy; he has given the call for unity with the League. In the sacred name of the Congress in the name of Congress League unity stop sabotage and anarchy, smash the Fifth Column which has been running amuck with the Congress banner the last six months. This is the way you can act as true soldiers of the Congress this is the way you can get the league to join you in winning Gandhiji's release.

Call to League patriots

We appeal to all our brother League patriots. On your shoulders rests the biggest responsibility

to-day. There are now few barriers of prejudice of misunderstanding left between you and the Congress. Gandhiji has disowned the campaign of sabotage and anarchy, he has stretched out on behalf of the Congress his hand of friendship towards you through the prison bars.

Nothing but these bars stand between you and your great brother party; between you and National Government which you so ardently desire and urgently need; between you and the satisfaction of your just demand for self-determination. The Viceroy has already said 'No' to this just demand of yours.

For self-determination

The Viceroy demands surrender of the Congress. To tolerate this demand is to help the bureaucracy to crush the biggest brother party of yours in the country through which alone you can realise your fight of self-determination.

To tolerate this is to allow the bureaucracy to smash all Parties after smashing the Congress.

The Viceroy has turned down even Gandhiji's proposal to consult the Congress working Committee members. To allow the Viceroy's policy to stand, to allow the Congress call to you to go unheeded, is to miss your biggest chance of winning freedom for the Muslim masses and salvation for all. In the name of the Muslim masses of the threatened provinces, in the name of the tradition and aspirations of your own great organisation, throw in your entire weight to get Gandhiji out.

Forward all!

We appeal to the Hindu Mahasabha patriots to every one of our brother patriots throughout the length and breadth of India, to unite with each other and win Gandhiji's release and end the crisis. We specially appeal to the working class Kisan and student organisation to rally behind the campaign for Gandhiji's release and to isolate those who try to exploit Gandhiji's fast for creating anarchy. One simple step forward and we force the bureaucracy to bend and save our entire nation from untold disaster. To fail to take this simple step means death and destruction for all.

All together demand Gandhiji's release!

Forward to National Unity to win National Government for National Defence and Freedom!

25: News item from *Daily Worker* (London) (dt 19.2.1943)

Daily Worker

[NAI - Acc. No. 2430]

Release of Kayyur Peasants Demand

There is a widespread demand throughout India that the four Peasant leaders sentenced to death in connection with the murder of a policeman at the village of Kayyur should be released.

The case is now before the Privy council awaiting leave to appeal. Already, the students Federation, the south India Railway Labour Union and a number of peasant organizations have passed resolutions calling for the release of these prisoners.

'*People's War*', organ of the Central Committee of the Communist party of India, has published some new facts in the case.

Among them is the fact that the policeman was stated by the accused to have been beaten up by the people for misbehaving with a Mussulman girl and died of his injuries. This was only one of several acts to widespread police terrorism and looting.

Witnesses Tortured

In the course of the proceedings it came out that witnesses for the defence had been tortured and were in no state to give evidence.

The prosecution case was that the policemen had been killed by a procession of Kisan (peasant Communist organisation) volunteers.

Although the judge observed that the man who gave the final blow might not even be before the court, he found five of the accused guilty, and sentenced four of them to death.

26: Official Noting on A.R.P. recruitment (dt 19.2.1943) (extracts)

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

[Observations of minister S.K. Basu, 19 Feb. 1943]

I agree with J.S. The Expression 'join' as members may probably have to be clarified further. Except in case of admission of a batch or group of persons what test will be applied to find out whether an individual is joining 'as a member' of a party unless from enquiries it appears that his intention is to serve some interests of the party other than the interests of A.R.P. work? I agree that a rigid watch should be kept against subversive intentions or activities calculated to undermine the organisation or to put it in difficulties, but the controller may probably expect some guidance as to the method of enquiry. Is it to be a straight question to an intending recruit as to his political affiliations? That may look like introducing politics which we seek to avoid. J.S. may please consider the point.

S.K. Basu,
19.2.43

Note: Following note by Fazlul Haq is in Chapter XVIII - Doc. 5 - Ed.



27: General Secretary, AIKS to Provincial Secretaries (dt 23.3.1943) (extract)

Indulal Yagnik Papers – File No. 22
[NMML]

Provincial Reports and our Bulletin

Comrades from provinces have asked repeatedly as to why the A.I.K.S. Bulletin has been again discontinued.

In the previous report it was hoped that the Bulletin would be issued again and it did issue. But after some issue ceased again. Hence this enquiry. I requested the President, who was himself editing it, to continue it. But he declined to do so and gave his reasons for the same. In short provinces generally do not send their regular reports to him or this office and if only some of them do so they send almost the facts and news first to the respective papers, 'People's War' and others and only afterwards to the office and in that case it becomes almost valueless as there remains nothing new to print. Moreover, there is the dearth of paper and funds too. It is a fact that even after my complaints in the previous report regarding this non submission of reports by the Provinces no improvement worth the name has been found in the matter and this state of affairs must be ended forthwith if we mean business and desire to function as a genuine mass organisation of the Kisans of India.

28: Gen. Secy. AIKS to Prov. Secy.

Reportage No. 3 (1942-43) Indulal Yagnik Papers – File No. 22
[NMML]

Ranga group secedes

Signs were not wanting to prove unmistakably even prior to Bihta Session that Prof. N.G. Ranga and his associates were not satisfied with their association with the rest of us and were secretly trying to fall in line with Forward Blocists and Congress socialists. It was clear to the clever eyes at Bihta too. But some how or other that could not materialise there and the extreme patience of the rest of us was mainly responsible for that. But soon after Bihta their counter moves and endeavours began to prepare ground for secession from the A.I.K.S. They went on non-cooperating and we continued tolerating with our eyes wide open. In the August period they betrayed as fully allecit¹ secretly and we came to know of it later on. Meanwhile, they were in search of some pretext to break away openly from us and as though, to afford them, quite unconsciously no doubt, such a pretext the Bombay meeting of the C.K.C. was convened. They refused to attend despite half a dozen letters and wires from the central office and the President. Yet, they willed to force their self made view on the council, which was simply impossible. If they were serious about it one of them at least ought to have come to Bombay to impress it upon the council. And no sooner had our Bombay decisions been out than they

came out in their true colours and denounced the same in a letter to the President, whose copy was sent to the General Secretary also, and simultaneously with it thus appeared in the 'Hindu' of Madras, dated the 14th November 1942.

From a correspondent, Nidubrolu, No. 10

'The Working Committee of the Andhra Provincial Kisan Sabha meeting here on the 7th and 8th instant, under the Presidentship of Mr G.L. Narayana decided to secede from the All India Kisan Sabha on account of serious differences over political issues'.

It appeared, in some form, in other papers too of that province. We tried our best to ascertain it from. Syt. G.L. Narayana himself. But he kept mum and did not reply. Rather his appointed men and associates started a wild propaganda to revile us. So we had to conclude that it was a fact.

One additional point of dispute arose prior to it. Just after Bombay this office began to receive a lot of complaints from various bearers and workers of the Kisan Sabhas in different districts of Andhra, saying that the provincial office under Ranga group was not supplying them with membership enrollment for us, and these were communicated to the provincial office. But no reply, no response! In the meantime it was reported that the Andhra Provincial office had been searched and sealed and the General Secy. arrested. Simultaneously with it came the request from the President, Kistna District Kisan Sabha to permit him to get membership forms printed as the last date for enrolment was drawing nearer and as his Provincial office gave even no reply to his repeated demands for these forms. Under the impression that owing to the said arrest and search etc. most probably the Provincial office could not function properly, I advised him and through him others also to do so purely as an emergency measure, after informing their Provincial office accordingly. I myself too informed that office of this and sent a copy of the same letter to that office. Meanwhile I got a letter from Com. G.L. Narayana to exempt Andhra from enrolment this year and allow the old Sabhas to function even next year. I had no reason and authority to do so. Hence I refused this demand. All this was too much to him and his friends and after most angry letters, as if, of injured innocence, protest and denunciation they decided to secede and to guillotine the Provincial Kisan Sabha in Andhra. Thereupon I promptly appointed Com. Vasudeva Rao of Bezwada as the Provincial organiser and requested him to move fast. He has done excellent work in this behalf and within scarcely a month has done every thing to enrol 55560 members, leaving no district without membership and despite persistent obstructions by Ranga group. It is to his credit and also to the credit of his coworkers and he and they all do deserve our congratulations. All these steps were taken, however, in consultation and full agreement with the President and all the members of the C.K.C. were informed of it in due course.

1 - - -
Probably a misprint for 'albeit'



29: Suptd. of Police to Chief Secretary, Government of Madras

Govt. of Madras Pub. (Gen.) Deptt. 1943 - File G.O. No. 889
[TNA]

Confidential

Dated; 25.3.1943

Newspapers and Periodicals - *People's War* - Objectionable articles.

dated 2nd March 1943

I invite attention to the correspondence resting with Mr Govindan Nair's DO No. 1147-14/12 dated 27-10-42¹ on the subject of the '*People's War*'. I enclose copies of issues Nos 32 and 33 dated 14 and 21.2.43² and invite particular attention to the portion 'x' marked. It is suggested that the general trend of the paper cannot but be subversive of Government of law and Order and that the objectionable portion of the paper far outweigh its occasional tilting at present congress policy.

Hamilton
Superintendent of Police
Special Branch. C.I.D.

1 and 2. Not printed.

30: Minutes of the Security Conference held on 8.3.1943 (extracts)

File No. 111/43 - Home Poll (I)
[NAI]

The conference felt that the present licence the communists enjoy in regard to their propaganda could no longer be permitted. Recognizing that the Defence of India rules and the India Emergency Press Act both provide the means to take action, doubt was expressed whether such action immediately would be wise. It would result undoubtedly in driving the propaganda underground where it would be more dangerous than in its present form more objectionable, and making more appeal. No reason existed to doubt that the party had made preparations to face a contingency of such a character by laying in stocks of paper and in other ways. The Communist leaders had already shown marked ability for underground work and Intelligence was not in a position now to give any undertaking of its ability to smash the communist underground organization because less was known about it than could easily be desired.

The conference felt that the right line of action was to bring pressure on the communist to mend their propaganda ways. It should be possible for authority by plain speaking to bring

P.C. Joshi and his lieutenants to a proper understanding of their position, that if the required improvement did not materialize at once, their propaganda their party and they themselves would be subjected to a process of action in which Government would employ to the full the ample powers it possessed. It was suggested that while the Government of India acted along these lines an exhortation from Stalin to India (not to the communists) to sink her political differences until the war ended and get on with the war effort would result in benefit and it was also felt that if the Communists were compelled to mend their ways a greater degree of provincial contact with them might be productive of good results, as had already been the case in some places.

Item 13(b) Welfare Officers

The controversial subject concerning police officers employed in war factories for the purpose of procuring secret intelligence under 'welfare' cover was again raised in view of the decision of the General Staff that bona fide welfare officers were to be appointed now to look after labour's well-being while the police officers earlier employment with that cover were to work as Security officers. The conference recognized that this decision was contrary to the opinion expressed at the Lucknow Conference which stressed that without welfare 'cover' the benefit from employing police officers in order to collect secret intelligence would be greatly diminished.

The conference reiterated the opinion previously given and desired to record its dissatisfaction with the decision stated above.

Provincial representatives asked to be informed whether it was intended now that police officers should carry out 'physical protection duties' in addition to their intelligence duties. If it was felt that this was again contrary to the previous recommendation that physical protection should be the responsibility of the military control in each factory.

31: Official Noting regarding article in *People's War* (dt 11.3.1943–21.3.1943) (extracts)

Govt. of Madras Pub. (Gen.) Deptt. 1943 File G.O. No. 889

[TNA]

Please see the report on p. 1 ante.¹ It is for order whether the two issues of the *People's War*² in question need be brought to the notice of the Govt. of Bombay as was presumably done in regard to certain other issues of the same paper-vide letters No. 45997/42-1. Public (General) dated 17-9-42³ and No. 56929-3 Public (Genl) dated 15-1-43.⁴ Attention is invited in this connection to the Govt. of Bombay's letter dated 27-1-43⁵ at pp. 21-22 in G.O. No. 506 Public (GI) dated 15.2.43.⁶

11.3.43

Thro's S.C. Section

- 12.2.43(i) The most important portions marked to the Supdt. C.I.D. in these two issues are those concerning Mr Gandhi's fast. Each of them has also a leader on the subject. It is doubtful. However, if these articles are any worse than those that were appearing

in a No. of other papers. Some of the articles or leaders in the *Hindu* during the fast were more or less of the same character.

- (ii) Of the other objectionable passages there is one headed 'Army of Linlithgow must go' on p. 1.⁷ Articles like this too have been appearing in other papers.
- (iii) The passages describing 'Independence Day' pledges in parts of Madras Presidency. This appears to be the Communist version of Independence Day and no action is perhaps necessary on the mere articles.⁸
- (iv) Other passages deal with the alleged 'failure' of the 'bureaucracy' to deal with food problems also; on the last page of (D) there is a table showing contribution to the Communist Party. No action need be taken perhaps on these.⁹
- (v) In (q) there are two marked passages (pp. 2-3) one dealing with 'vindictive' sentences in the C.P. and another of 'Recruitment Scandal' in Calcutta. These subjects may be left to the Govt. concerned. There is also a portion (marked in blue on p. 2 of (q) characterising a sentence in the Tinnevely Salt Inspector murder case as 'barbarous'.¹⁰

In their letter on p. 21 of¹¹ (e) the Govt. of Bombay stated they had sent for the Editor of the paper and warned him and the Editor also promised to moderate his language. If the matter is to be brought to the notice of the Bombay Govt. now only the articles are Gandhi and the portion in (q) condemning the sentences in the Tinnevely case need perhaps be considered. The latter is, however a very small item, as far as the former is concerned. It will depend upon the general policy that was adopted by this Govt. towards similar articles appearing in other papers.

Signed
15.3.43

It is hardly necessary to address to Bombay Govt.

Signed

I am inclined to send these to the Govt. of India and say that so long as the newspaper is allowed to publish matter such as that marked in their copies it is idle to attempt to control other papers.

Submitted
21.3.43

H.E. may see.

With reference to the orders in circulation on p. 4 ante a draft letter to the Govt. of India is submitted for approval.

Signed
25.3.43

- 1 and 2. See Doc. 29 - The articles (in *People's War*) referred to in the above document are not printed. See also Doc. 29 in Chapter II.
- 3, 4, 5, and 6. Not printed.
- 7, 8, 9, and 10. References to the article in *People's war* - Issues No. 32 & 33 (*People's War* - [NMML]).
- 11. Not printed.

32: Official Notings regarding articles in *People's War* (dt 12.3.43 to 3.5.43) (extracts)

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889

[TNA]

Secret
Confidential

From the Special Branch. Criminal Investigation Department Chief Secretary No. 1317

Dated 12 March 1943

Information is to hand that Mohan Kumara Mangalam* of No. 2 Jones Lane, Broadway, Madras received the following circular as first Editorial for P.W., 35, from the Central Headquarters of the Communist Party of India 1908, Khetwadi Main Road, Bombay.

'Stop Massacre of Press Liberties' dated 7.3.43 – (See Doc. 29 In Chapter II – Ed.)

To, The Chief Secy. to the Govt. of Bombay

18.3.43

Sir

It has been reported to this Govt. that Mohan Kumaramangalam of Madras has received the following circular as 1st Editorial for P.W. 35 (*Peoples War*) from Central Headquarters of the Communist Party of India, 1908 Khetwadi Main Road Bombay. I am to enquire whether the Govt. of Bombay are allowing the article to be published.

Signed
18.3.43

The article has already been published in the *People's War* of 7th March. The Bombay Govt. have also replied to our letter above in their letter on p. 1 of L.F. where they say the article was published with the omission of some sentences. These sentences have been bracketed in blue on p. 1 ante. The Bombay Govt. also state that though the article is in exaggerated terms they have decided to ignore it.

We have already brought to the notice of the Govt. of India the objectionable tone of some of the articles in this paper. It does not seem necessary to take any further action on this.

Signed
6.4.43

A1

We had better pass them on to the Govt. of India in continuation of our reference in Y.

Signed
6.4.43

A draft letter is submitted.²

Signed
9.4.43

Please see the C.I.D. report on p. 3 of and the article 'Salute the Kayyur Heroes'³ on p. 11. Orders whether the article need be brought to the notice of the Govt. of Bombay or India.

Please see the article on the 'Kayyur Heroes' in the by *People's War* on p. 11 sent by the C.I.D. I have added also on p. 13 an extract from its Tamil counterpart in Madras the *Janasakti*.⁴ Though it does not seem so objectionable as the article in the *People's War* it also appears actionable

In the L.F. below security was demanded from the *Desabhimani* of Calicut for publishing a similar article. Legal Secretary was of opinion that it was actionable.

We can take action against the *Janasakti* similarly (after getting Legal opinion). But it seems meaningless to do so when the much more objectionable article in the *People's War* is allowed scot free. We may however give the Editor *Janasakti* a warning as was ordered at 'A' on p. 10.

We may also draw the Govt. of India's attention to the article in the *People's War*⁵ (p. 11) in continuation of our letters at Y on p. 2 ante. telling them also that we have taken action against the *Desabhimani* already.

Signed (C.S.)
13.4.43

Before a warning is given to *Janasakti* or security is demanded. P.A.C. has to be consulted

The remarks of head are invited on the legal action that may be taken in respect of the article.

Signed
13.4.43

Legal Department

The article in the *Janasakti* dated 7th April 1943⁶ (extract at page 13 c.f.) falls within the scope of section 4 (1) (b) of the Indian Press (Emergency Powers) Act 1931 in as much as it expresses approval or admiration of persons convicted of cognizable offences. Security can be demanded from the paper under the Press (Emergency Powers) Act.

Legal Department

Signed
15.4.43

Public (Genl) Deptt.

Please see note on p. 4 ante (Note above — Ed). Legal has given his opinion that the article in the *Janasakti* (p. 13f) will be actionable. Orders are solicited.

Signed
17.4.43

C.S.

It seems to me that this Govt. may take action in respect of *Janasakti*.⁷ The P.A.C. may be consulted.

Signed
17.4.43

Sent to Pub. Press for action.

Signed
19.4.43

S.P.A.

Ref: Orders at [Z] at bottom of p. 5 ante.

The matter has to be placed before the Madras Press Advisory Committee. But a meeting of the Committee cannot be held for a week more, as most of its leading members are away at Delhi. Submitted for orders whether any interim action is called for.

Signed
19.4.43

The orders are that the P.A.C. should be consulted. I don't see that any interim action is called for or necessary. U.S. may see.

Signed
20.4.43

Proceedings of the Madras Press. Advisory Committee held at 12 noon on Monday the 3rd May 1943:

The *Janasakti* – The Committee recommended that a formal and severe warning be administered.

The Committee Convener will as usual, convey the 'severe' 'warning'

Signed
3.5.43

Doc 29 in chapter II – The omitted sentences are not in the document. At the end of para 5, the original contains the following sentence 'The Secretary further strictly warned the press that in case of Gandhiji's death, no picture, no stream would be permitted, they should not devote more than a column for Gandhiji'. Again in the following paragraph the omitted sentence is as follows 'Though the order was subsequently withdrawn, it only betrayed that bureaucracy was out to use the maximum force to crush the least expressions of independent opinion'. In the beginning of para 9 the sentence was omitted 'the depredations against the rights of the press have become a national danger. The situation arising from Gandhiji's fast has shown that the depredations must be stopped at all costs'.

2. Not printed.

3 and 5. Doc. 33.

4 and 6. Doc. 42.

7 Doc. 48.

(Note: As the above document is an extract from a file of official Notings, there are many references to page numbers etc. Those have not been printed.)

33: News item in *People's War* (dt 14.3.1943)

People's War (No. 36)

[NMML]

Salute to the Kayyur Heroes

With Clenched Fists we Vow to You the Japs shall Not Pass

Four young Kerala Communists are being sent to the gallows. They belong to Kayyur village North Malabar. Their names are Mudathil Appu, Podvarath Kunhambu Nair, Koyithattul Chirukandan and Pallikan Abubakar.

Who are they?

Who are these Kayyur Comrades? Risen out of poor and illiterate working-class and peasant homes these young Communists, none of them is over 25 years old, became the builders and leaders of the Kisan Movement in Kasaragode Taluk.

The great Kisan struggles which they led during the years 1933-41 shook the whole of Kerala and laid the basis for making Kerala the home of a mass joint Kisan-Congress movement.

What is their Crime?

It is for this work that the Kayyur comrades are being taken to the gallows today. To suppress this rising Kisan movement, there was let loose a reign of terror against the entire countryside in March, 1941. Houses were broken into and people beaten up. To protest against this there was a demonstration at Kayyur on March 28. A notorious Police constable who had been responsible for heinous misdeeds against the people was on the spot. The Kisans who had assembled there in their thousands are alleged to have got enraged that they stoned him to death.

It is for this that these comrades have been sentenced to death.

The sessions judge who originally passed the sentence, himself admitted that in an incident like this in which so many participated, it is difficult to identify the actual person who committed the murder and that probably that person had NOT been brought before the court.

A mighty movement rose in Malabar in defence of the 4 Kayyur patriots. Well-known Congress Leaders of the province were in the forefront of this movement. The movement to save the Kayyur comrades spread all over India to the Punjab in the North, to Bengal in the East. Funds were collected for appeal to the Privy Council when the Madras High Court upheld the sentence. The Communist Party of Great Britain secured the services of the well-known British Lawyer and friend of India Mr D.N. Pritt to defend their case.

Their Call from the Gallows

In a rousing letter which they wrote to comrade P.C. Joshi some time back, the Kayyur comrades declared that they are not afraid of death; their only regret is that they are not facing death at the battle-front for our nation's defence and freedom. They want to die defending their beloved motherland and the great national movement which they themselves helped up against the Japs. But the Bureaucracy is sending them to the gallows instead.

The right which the Kayyur comrades demanded and which imperialism refused, the right to defend their own land and their own people, — this right is today the demand of the entire Indian nation. Their heroic example should rouse patriots all over India to fight harder than ever for this cause. Their call from the gallows for national defence should be heard by all their fellow-countrymen throughout the land. In this is the guarantee that they shall not have died in vain.

A Message that all will Echo

Alongside we print a message to these 4 brave comrades which has been sent to us by their fellow Communist fighters of Hugli district (Bengal). This message which the Hugli comrades have sent will be echoed in millions of patriotic hearts all over India wherever the story of these four Kayyur martyrs is read:

Red Greetings

Victorious Comrades!
Our greetings to you!
World red with the blood of
oppressed humanity
Greets the coming morrow
With clenched fists red with blood
Your lives give shape to these greetings
And our Red Greetings to you Comrades!
The fascist enemy is coming
Coming like sharp-clawed
blood-sucking vultures.
'The spirit to resist them flows thru'
your arteries
Energy runs thru veins and capillaries
And courage in every drop of your blood
The tasks which you got no opportunity to fulfil
Will be shouldered by them — the people,
World's armoured clashes convey this news;
--Our Red greetings to you comrades;
'There's no fear — doubt there is none
'The angry eyes of the disastrous days is getting confounded
The peoples of the world will occupy your place
Arrogance shows growing incapacity in enemy's camp
Rudeness of angry eyes shows defeat cold in heart
Your sacrifice - bold and fearless
Writes a preface to Victory purpose;
World Peoples' Victory
--Our Red Greetings to your Comrades!

(Translation from Bengali)



34 News item in *People's War* (dt 21.3.1943)

People's War (No. 37)

[NMML]

Salute to Kayyur Heroes !

British M.Ps Rally to their cause
(By Special Cable from London, March 15)

Message of greetings from the Tamil Nad Provincial Committee of the Communist party of India to the Kayyur comrades Mudathil Appu, Podavarth Kunhambu Nair, Koyilthattul Chirukandan and Pallikan Abubakar, four Communists awaiting execution whose cause has aroused universal sympathy.

The Tamil Nad Provincial Committee of the Communist Party of India sends its warmest fraternal greetings to the Kayyur comrades. Proud of their great contribution to the cause of Indian freedom, glorying in their courage and fortitude in the face of the sentences of death that has been hanging over them. The Committee vows to be worthy of these comrades who have brought everlasting honour to the Red Flag and the Communist movement the world over.

The leave to appeal on behalf of the four peasant leaders who were condemned to death in the Kayyur case was refused by the Privy council. The famous barrister D.N. Priddy KC appeared for the accused before Lord Atkin, Lord Thankerton, Sir George Rankin and Sir Madhavan Nair. The case for leave to appeal was ably argued on the grounds that the approvers' evidence was not corroborated.

Following the Privy Council's adverse decision a strong appeal has been made to America to intervene. Appeals for clemency are coming in from many M.Ps. Those that have sent them up to now have included Lord Strabolgi, S.O. Davis, John Parker, Rev. Sorensen, also Messrs Cove, Sloan, Horrabin, Drilett, Gallacher, Silvernan, Barstow and others — all M.Ps.

35 Review of a news item in *Janayuddha* (dt 10.3.1943)

Govt. of Bengal Office of the D.C.P. (Sp. Br) File No. SK 562/42
[Bengal State Archives]

A question was raised whether the introduction of Rationing system in Calcutta would be a failure as it was in the case of controlling of food stuff. However, to make this Rationing System a success, it was demanded that the Govt. should store sufficient rice for distribution, distribute the Rationing Cards through the Defence Committee, Congress League, C.P.I. and other public organisations to hasten the matter and supply the rice at the present controlled rate. In case the Govt. wanted to increase the price it should consult the above public

organisations. It was also said that the C.P.I. succeeded after hard labour to move the Congress, League and Hindu Mahasabha to work together in this sphere.

It was announced that Com. Bankim Mukherjee would preside over the 7th annual Kisan Sabha to be held at Bhakhna Kalan, Punjab on 2nd April, '43.

C.P.I. Publications

In the editorial headed '*Deshbasir (a) Khudhai Gandhijir anasan*' (Gandhi's fast represents the hunger of the countrymen) of Janajuddha dated 3-3-43, it has been stated that Gandhi resorted to fasting in order to solve the food problem of the country. Union of different communities were urged for tackling the problem and the destructive activities of the fifth columnists to secure the release of Gandhi were condemned.

In another article '*Sangbad patrar dam baraite dio na*' (Don't allow the price of newspaper to rise up) the subscribers have asked to protest against the Government order announcing a further rise in the prices of newspapers from 1-4-43.

In an article '*Janajuddhar pathai Swadhinata*' (freedom through peoples war) it has been stated that Gopal Banerjee of North Calcutta has written a letter from Presidency Jail saying that freedom will be achieved through peoples' war and not through acts of sabotage.

36 Govt. of Madras to the Govt. of India

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889

[TNA]

Confidential

25/3/43.

To
The Secretary to the Government of India,
Home Department. (with the papers at Q & D

Su,

Newspapers and Periodicals – *People's War*
Objectionable articles.

I am directed to say the Communist newspapers in circulation in this Province have been indulging in intemperate criticism of the action of Govt. and frequently publishing objectionable articles. A close watch is therefore being kept on these papers. The *People's War* of Bombay and *Janasakti* of Madras which is to all intents and purposes a Tamil version of the former, are prominent in this respect. In certain issues of October and November 1942 several objectionable articles were noticed in both these papers. It was, however, considered that unless the Govt. of Bombay were prepared to proceed against the *People's War* no useful purpose would be served by taking action against the *Janasakti* of Madras in view of the fact that the objectionable articles in both the papers were similar in nature. The objectionable articles in the *People's War* were brought to the notice of the Govt. of Bombay and they were

asked whether they had taken any action against that paper. They replied that the articles in question were pointed out to the Editor of that paper who was also warned and that he thereupon promised to see that the articles were to toned down in future. I am to invite attention in this connection to the Govt. of India, Home Dept. a copy of which has communicated to this Govt. by the Bombay Govt.

I am directed to say that it has been brought to the notice of this Govt. that the *Peoples' War* is again publishing articles of an objectionable nature, subversive of the Govt. and Law and Order. In this connection the attention of the Govt. of India is invited to the passage marked in the two issues of the *'People's War'* dated 14th and 21st February 1943 sent herewith. This Govt. are of opinion that so long as this newspaper is allowed to publish such matter it will not be possible to attempt to control effectively other.

1. Not printed

37: Government of Bombay to the Government of Madras

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889
[TNA]

Confidential

No. S.D. III 167
Home Department (Political)
Bombay Castle, 25th March 1943

D. Symington, Esquire, I.C.S.,
Secretary to the Government of Bombay
Home Department and Provincial Press Adviser.

The Chief Secretary to the Government of Madras,
Madras.

Sir,

With reference to your letter No. 3/579-1/43, dated the 18th March 1943,¹ I am directed to state that the article in question was published in the issue of the *People's War*, No. 35, dated the 7th March 1943,² (cutting-enclosed), under the same heading, with the omission of some words and sentences and with some other minor changes. The article, as published in the paper, was examined, and though it is couched in rather exaggerated terms, it was decided to ignore it.

Your obedient servant,

Secretary to the Government of Bombay,
Home Department, and Provincial Press Adviser.

1. Not printed.
2. Doc. 29 in chapter II.

38: Suptd. of Police to the Chief Secretary, Govt. of Madras (regarding article in *People's War*)

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889
[TNA]

Secret
Confidential.

From the Special Branch, Criminal Investigation Department,
Chief Secretary. No. 1577/C.

Dated 27th March 1943

In continuation of my 1134/C dated 2-3-43¹ invite attention to the article 'Salute to the Kayyur Heroes'² on page 3 of the '*People's War*' No. 36 dated 14-3-43.

I suggest that this subversive article is likely to undermine respect for law and order in Kerala. P.C. Joshi's recent tour is likely to give a strong stimulus to communist activities in Malabar and South Kanara. This makes it all the more urgent to control this communist propaganda if future trouble is to be avoided.

Hamilton
Superintendent of Police,
Special Branch, C.I.D.

- 1 Not printed.
2 Doc. 33

39: Article in *People's War* (dt 28.3.1943)

People's War (No. 38)
[NMML]

Sunday March 28 1943

Save Kayyur Heroes from the Gallows

Messages of greetings on their self-sacrifice and Heroism pour in from all over India.

Once it is established as it was in this case that the act which extinguished the life of the victim was done by one or more persons in furtherance of the common intention of all, each of them is guilty of the murder even though it may never be known by whose hand the life was extinguished.'

With these words Mr Amery has justified the death sentence passed upon the four Kayyur Communist leaders, Madathil Appu, Podavarath Kunhambu Nair, Koyithattil Chirukandan and Pallikan Abubakar of North Malabar.

The same bureaucracy which jailed the national leaders and banned the congress, which

refused Gandhi's release is today refusing to reprieve the four Kayyur Comrades. And at a time when the Japanese Fascists are digging themselves in the Far East, and when the nation and the people need Kayyur comrades most in their fight to save the motherland from the fate of Burma.

It is the biggest single act the bureaucracy can do to shatter the morale of the entire people of threatened Kerala and strengthen the hands of the Fifth Column there.

Heroes who want to die fighting the Japs are being sent to the gallows instead.

Here is what the Kayyur comrades themselves declared right from under the shadow of the gallows, last August in a letter to Comrade Joshi!

We assure you that we shall safeguard the confidence placed in us by the party and the people up to the last moment of our lives. — We are not those who want to live just for the sake of living. Our only eagerness is to be able to sacrifice our lives in the most effective way so as to serve the cause of saving our motherland from the Fascist barbarians. Deprived of the chance to annihilate as many of the enemy as we possibly can, deprived of the chance to strike at his diabolical wiles — it is such a manner of death that fills us with despair. We want to tell you that should the army authorities intend to form a suicide squad among the troops and should you consider us suitable for this work we shall welcome such a post of duty with Communist zeal.

The history of patriotism seldom records a greater and nobler example of devotion to the motherland than this. No act of the foreign bureaucracy can make young patriots forget that this land and this people are theirs, that the defence of its hearths and homes from crisis and invasion is their job, that no one else will do it for them.

It is supreme patriotic realisation that made them issue their call for national defence even from the gallows.

The example of the Kayyur Comrades has stirred fellow-patriots all over the land. Meetings are being held everywhere demanding their reprieve. Letters greeting their heroic self-sacrifice and their patriotic call to the whole nation are pouring in to them from all parts of India.

From Maharashtra, more than 110 letters, from fellow patriots have reached the Kayyur Comrades, more than 15 working-class and Kisan organisations have sent greetings to them.

More than 21 working-class, Kisan and communist party organisations have sent their Lal Salams to them from the province of Andhra.

14 Organisations from the different districts of Bengal have sent their greetings. In the District of Howrah, a huge women's rally of more than 1500 demanded the commutation of their death sentence.

In Indore, a special day was observed by the Indore Committee of the Communist Party in honour of the Kayyur Comrades. A letter 'vowing to continue the work for which they are laying down their lives' has been sent to them.

At Dehra Dun (U.P.) big rally was held by the District committee of the Communist Party. A resolution was passed assuring the Kayyur comrades that 'their call from the gallows would inspire our entire people to fight for the defence of the country'. More than 8 letters greeting them have gone from Dehra Dun alone.

'Your sacrifice and courage is an example to me. Every word of your message inspires every Indian worth his salt to lay down his life for the defence of the country', declares a young student patriot from U.P.

From their own fellow-Communists of Kerala the following assurances have been sent to the Kayyur comrades. Thousands and thousands of homes in Kerala will endorse this message

which Comrade Krishna Pillay has sent them on behalf of the Kerala Provincial Committee of the Communist Party:

No Bolshevik ever shrinks from facing death in the discharge of his duty. No Bolshevik ever sheds tears over his fellow-comrades who lay down their lives at the post of duty. We Communists who fight for the freedom of our motherland and for the liberation of our people should gladly face death for this great cause, not once but a hundred times if necessary - without flinching and without a tremor.

We assure you that the sacred memory of your heroism and self sacrifice will ever be an inspiration to us. We vow, comrades, that we shall continue and fulfil to the last drop of our blood, the great patriotic task which you leave behind you unfinished.

A last-minute attempt is still being made by the people of Kerala to save these young comrades. A petition for reprieve has been sent to the King-Emperor, and the Governor of Madras is being requested to stay execution of sentence. Every motion of public opinion, irrespective of party, class, and creed, is rallying behind this last move to save the Kayyur patriots.

Their Last Call

Whatever may happen to them the Kayyur comrades are facing death as befits patriots who belong to the great land of Iqbal and Tagore, of Deshbandhu and Ram Mohan. Their last call to all their fellow-patriots is to unite and defend the nation as the only way to march forward to freedom.

We are spending every minute of our life behind the prison bars singing joyfully songs in praise of our holy motherland - we are only too glad to hear that our comrades outside are straining every nerve of theirs to rally the Indian people along with the peoples of the United Nations to crush fascism and save the future world from aggression and domination of the weak by the strong . . . We do fully believe the people of the world will emerge victorious in the end and the future of the world will be bright and glorious. Forge national unity by all means; that is the only path for our national salvation.

40: Chief Secretary, Madras to the Supdt. of Police

Govt. of Madras Pub. (Gen.) Deptt. 1943 - File G.O. No. 889

[TNA]

Memo. No. 14119-1

Dated: 5.4.43

Newspapers and periodicals *People's War*- Objectionable articles - Ref: Spl. Br: C.I.D. No. 1577/C, dated 27.3.43.¹

The Superintendent of Police, Special Branch, C.I.D. is requested to furnish a press cutting, a copy of the *People's War* dated 14.3.43,² referred to in his letter cited above.

The Supdt. of Police,
Spl. Branch, C.I.D.
R.D. 28.4.43.

1 Doc. 38.

2 Doc. 33.

41: Supdt. of Police to the Chief Secretary, Madras

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889

[TNA]

Secret

No. 1786/ C

Dated: 8th April 1943

From

The Special Branch, Criminal Investigation Department

To

The Chief Secretary.

Objectionable articles in *Peoples' War*.

A typed copy of the article entitled 'Salute to the Kayyur Heores'¹ is enclosed, as desired in your public (General) Department memorandum No. 14119-1 dated 5-4-43.

D.F., Signed for Supdt. of Police
Special Branch, CID

1 See Doc 43.

42 Extract from an article in *Janasakti* (Tamil)

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889

[TNA]

Janasakti 10.4.43.

Execution of the Kayyur Prisoners

The paper writes: Their crime was that they desired the liberation of the country and worked for the labourers in distress and were patriots and anti-Fascists. They were even prepared to join a suicide-squad for the defence of the country. But the bureaucracy hanged them. On the other hand, there is a prisoner 6000 miles away—one who plunged the whole of Europe in blood, enslaved nations and massacred children and was a Fascist and the bitter enemy of civilisation. He is Hess—a criminal, in the opinion of the world. But how has the same bureaucracy treated him? It has kept him in a beautiful place, in good health, without the least discomfort. The Kayyur comrades have died. We take a vow that their sacrifice will not go in vain. Persons who sacrifice themselves do not die.

43: Article in *People's War* (dt 11.4.1943)

People's War (No. 40)

[NMML]

People's War – Organ of the Communist Party of India

Editor: P.C. Joshi, Sunday, April 11, 1943

Comrade P.C. Joshi interviews:

Kayyur Heroes on Eve of Execution

(They Died with 'Communist Party Zindabad' on their Lips (March 29th))

FOUR young kisan patriots, already become famous as the Kayyur comrades have been hanged on 29th March. Their names are

Macathil Appu
Kunhambu Nair
Chirukandan
Abu Baker

Last Testaments

Kunhambu;

The Party taught me to serve the people. If it thinks I have done it well – that is all I need to know.

Appu;

You have brought great news of the growing strength of our Party. This inspires us to mount the gallows firmly.

Chirukandan;

They can hang us but the kisans whose sons we are – are immortal. If we had more lives we would fight and die over and over again for our motherland.

Tell my mother that her son is proud to follow in the footsteps of our great martyrs. Bring up my young brothers to be worthy of our great Party.

All of them were below 25 years barely literate, but they became people's leaders in their village. They took foremost part in the organisation of the Congress Committees, themselves joined the Congress Volunteers and founded the Kisan Sabha. The peasants in the taluka had no tenancy rights, they organised and led a veritable kisan upsurge. The police hated them for their patriotism; the landlords because they roused and activated the kisans.

Flowers of Humanity that can never Perish

A unit of the Malabar Special Police was stationed in the area. They went out to search kisan houses and ended by looting them. They caught Kisan workers to interrogate them

but began and ended by beating them up. To protest against the high-handedness, a demonstration was fixed in Kayyur village. A police constable came along. His very sight so enraged the people, he is reported to have misbehaved with a Muslim peasant woman, that the assembled kisans are alleged to have stoned him to death. It is for this that these comrades have been hanged.

The Sessions Judge admitted that in an incident like that in which as many participated, it is difficult to identify the person who actually struck the fatal blow and that probably that person had not been brought before the Court. Still he convicted them.

The High court summarily rejected the appeal. It stunned all patriots of Malabar. Leaders of all parties, and all the M.L.As and M.L.Cs of the district appealed to the Madras Governor for mercy. A province-wide united front campaign was set afoot but the Governor refused to listen.

It was another shock but soon enough the campaign took a wider turn. From all over the country appeals were made to the Government of India to intervene.

They wrote me a moving letter. They had vowed to fight to death for the freedom of the country when they joined the Party; they were not afraid to die, their only regret being that they were dying at the gallows and not on the battle-front, when the Motherland stood in danger of attack from the fascist invaders.

I made a special appeal to the Government, offered to send them to the army or the Jap rear, the day they were released. Which army could have deserved better soldiers?

But the Government of India is not ours, a prisoner of its own phrase — the 'respect for law and order must be maintained' it went by red-tape and rejected the appeal, afraid of creating precedents.

After this it seemed a hopeless battle but we did not give up as long as there was any hope of saving them for the service of the Motherland. Appeal was filed before the Privy Council, our British comrades secured the free services of the eminent counsel, D N Patt. This too was of no avail.

The British comrades tried the very last chance; they moved some Labour and Liberal M.Ps and some church dignitaries to appeal to the King. That too failed.

Four of the best sons of the Indian Kisan are no more. No Indian patriot who heard their tale refused to do whatever lay in his power to save them. Across the seven seas sons of the British workers, leaders of the British Communist Party, struggled to save them as if they were their own brothers. They won the support of the best sons of the British people who worked for these four comrades of ours as if they were their own countrymen.

Sons of the soil, they adopted communism, the cause of mankind, as their own. Young in age, they joined the unconquerable army of fighters for freedom, the Communist Party, whose fighting detachments operate in every country in the world. They lived as true patriots, they died as noble martyrs.

We are the most influential Party in Malabar. There the Red Flag is not confined to towns along but flies proudly over hundreds of villages. An overwhelming majority of our 3,000 members are sons of peasants, and out of them 16 are serving life sentences, four were awaiting the gallows.

When the Party Centre asked me to go to Malabar as its representative for our Provincial Conference it came as the fulfillment of a long-cherished desire, to me with my own eyes, Communism in action in our countryside.

When the Party Centre also commissioned me to meet and give our last greetings to the

Kayyur Comrades, also go to Kayyur and pay the Party's homage to the families of these four Party brothers, I knew I was going on an errand of honour.

As soon as the Party conference concluded at Calicut we reached Cannanore, covered a rally of 6000 workers and citizens in the midday sun and amidst deafening shouts of Kayyur Sakkakal Zindabad, motored straight to the Central Jail. For a long distance the echo of the slogan followed us. Krishna Pillai, our Malabar Secretary, had announced that we were going to the jail.

We pulled up before the jail gate. It looked like any other jail, and the iron wicket door was opened for us just the same way as everywhere else. We bent ourselves low and passed through, signed up the register and were taken charge of by the jailor.

We went round and round the gravel path, till another small gate opened into the condemned cells.

There they were in the first four cells, all standing at ease, pulling themselves to attention, and their clenched fists went up as they said: Lal Salam After passing in front of all the four cells I came back to the centre and looked up.

They looked so young and clean, their bodies had grown thin, after a whole year inside the condemned cells, but light and courage shone on their faces. The very first glance convinced me that these lads will mount the gallows with a firm step and '*Communist Party Zindabad*' on their lips.

We had carried a big packet of postcards and letters, written in all the language of our vast land. They were greetings to them, written in an informal and intimate manner by workers, peasants, students of all ages, and of both sexes, from all over. They smiled broadly when they saw them, the jailor was bothered how he would get them translated to censor them and felt relieved when I told him that English translation of most of them was attached therewith.

They understood neither English nor Hindustani and I could not talk Malayalam. With the jailor's permission Pillai translated me sentence by sentence. The flood of tears over my cheeks made the flow of words out of the mouth possible or I would have just got choked up and collapsed. This is the substance of what I told them on behalf of the Party.

'The Party is proud of you four than it is of any of its members. You came to us when we were in mere hundreds. Today we are over 9,000 Party members and 5,000 candidate. All 17,000 of us vow to you that we will hold high the banner you held so worthily, and continue fighting the battle you fought so heroically.

'You are dying for an immortal cause, of freedom and prosperity for our country and the whole world. Ours is the cause of justice; it must triumph, you are giving your lives to see that it shall triumph. We know you are fulfilling your dream, not dying.

'You, our beloved four, are being lost to the Party. That it is the work and example of comrades like you that have made the Party what it is today. When you joined the Party in Malabar it was a group of young patriots. Today we are the major political party in your province. All over the country the best sons of the people are joining the Party. Wherever the Party is known, your names are uttered with love and veneration. Patriotic young men and women consider it an honour to join the Party, because it bred young martyrs like you.

'The Party is not losing you but gaining four martyrs. Let them send you four to the gallows, that we can't help today. But inspired by you four we will win four hundred, four thousand new Party workers. This they can't prevent, this we will work for. And rest assured comrades, we will win. As our cause is immortal, so is its instrument, our Party. Persecution

never reckoned but only strengthened us. Your martyrdom brings not only glory but strength to the Party. No Communist can desire a better end.

'You are being lost to your families. We know when you joined the Party you accepted the people as your parents and workers to see that no Indian father or mother suffers from what your own did. Rest assured comrades that we, all the 17,000 of us, will look after your families as our own. We will do all we can to make your parents feel that the Party is their family, every Party member their son.

'To get the chance to meet you has been the greatest day of my life and I bring you greetings from the Party you love more than your life. I am going to your village from here and will meet your families. Is there any message for them.

'Back them up. Ask them not to worry,' all of them said together.

Anything else I asked.

'You have already said all that was welling up inside us' one of them said.

'No, no, you must speak as long as there is time for the interview. Comrades outside will tear me up, if I don't report back every word of what you say. I have a good memory and I will carry it all back-', I said, trying to smile.

Jailor Saheb began looking at his wrist watch. I asked them to hurry up.

Kunhambu who was in the first cell began.

The Party made me capable of doing whatever I did for the people. If the Party thinks I have done my duty that it all I ever desired.

Appu sai :

You have brought great news, of the growing strength of the Party. We will now mount the gallows with added strength. We joined the Party to fight and die for the freedom of the country.

Chirukandan said:

We are only four kisan sons. But India's millions are kisans. We can be hanged but they can't be destroyed. This is what has sustained us all through. These letters from all over the country make us feel sorry that we can't live longer to serve them. We have known no other regret. If we had more lives we would have died over and over again for our cause.

He had taken a leading part in two kisan struggles.

Abu Baker was in the last cell:

We have drawn inspiration from the life of our martyrs. We never dreamt that we will share the honour of being one of them. Tell all the comrades that we will mount the gallows fearlessly. My mother is very old. Cheer her up. My brothers are very young. Educate them for Party work. I was the eldest member of the family. They have nobody left to look after them.

The moment he stopped the jailor said that the time was up. I asked his permission to shake hands with them. He agreed.

Not only the iron grating of the cell but the verandah had separated us from them. Jail rules!

It was a thrill to go near them and clamp their hands warmly. They had been volunteers and immediately after handshake, they instinctively drew up to attention and gave the Lal Salam with their clenched fists.

Appu held on to my hands a few moments longer and quietly whimpered 'comrade' but no other word came out of him. I looked into his eyes — they were moist. I looked away across the verandah — there was a sort of flower-bed. Without a thought, what was inside me got formed into a sentence:

'These flowers are perishable. You, comrades, are the flowers of humanity that will never perish'.

Pillai promptly translated me. Young Appu blushed deep.

When it came to Abu Baker, I did not feel like letting him hand go. I thought of the great Moplahs and their heroic past. They had contributed one out of the four martyrs. And there are Hindu patriots who doubt the patriotic bonafide of our Muslim brothers. As I tarried he went on repeating: Lal Salam Comrade. He had a very finely chiselled face and patriotic fervour glowed in his eyes.

As I finished clenched fists went up again from both sides, and we marched out with much lighter steps than we had marched in. We all felt easy within ourselves, brimming with pride for having comrades like these.

When we were left to ourselves Sundarayya, who had been silent all through, sunk in thought, spoke up, 'You were supposed to buck them up, and they have bucked you up instead.'

The only answer I could give was: They are our martyrs, they need no bucking up. I am their comrade being left behind. I needed it and got it.'

The car sped its way to the railway station, where we had to catch the train to Charvattur and then go up the river, on boat, to Kayyur where the families of these comrades were expecting us the same evening. I will write about my visit to Kayyur next week.

I finished my Malabar tour on 26th and at Calicut our Madras Secretary, Mohan's telegram awaited me: 'Whitehall refuse to intervene, date of execution will be fixed shortly.'

As I am writing this a comrade from Malabar has come with the news that these four comrades were hanged on 29th morning. The previous night they learnt that they will have to walk to the gallows the next morning. They spent the night singing in chorus patriotic songs and shouting slogans, '*Communist Party Zindabad*' being the most frequent and the loudest. Not one prisoner, political or non-political, slept that night in the Cannanore Central prison.

Early in the morning 3,000 citizens gathered at the jail gate demanding their bodies. The request was refused and they were asked to disperse.

Malabar kisans produced immortal sons like these young heroes. Our Party nurses patriots who take martyrdom easy, with a smiling face. We did our Red Banner to our Kayyur martyrs.



44 Review of an article in *Janayuddha*

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. 562/42
[Bengal State Archives],

Reported on 19.4.43

Office of the Dy. Commissioner of Police,
Bengal.

Review of *Janayuddha*,

dt 7.4.43

Under the caption, 'Threat of Bombs increasing, it condemned the Secret circular of the A.R.P. authorities for not enlisting the persons who were politically connected, specially the communists, as A.R.P. Wardens. It demanded for the enlistment of the A.R.P. volunteers from among the public as Bengal was declared a 'red area'. It reminded the Government that the ARP was meant for the public and not for the authorities, who wanted the whole management in their hands and demanded for the formation of a committee with the distinguished citizens and workers, who would supervise the A.R.P. workers.

45 Review of an article in *Janayuddha* – Reported on 20.4.1943

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. 562/42
[Bengal State Archives],

O R. 16505

Janayuddha dated

In an article headed 'Provincial volunteer Camp' the paper says that the Provincial Volunteer Training camp was opened in Calcutta, from 25th March to 1st April. Trainees from Calcutta, Dacca, Faridpur, Mymensingh, Patna, Rajshahi and Barisal joined the camp. Comrade Shub Sankar Mitra, Kamal Bose and Amar Dey imparted training on different subjects. The volunteer trainer of the Provincial Committee also trained men at Rangpur, Jalpaiguri, Dinajpur and Srikhatta. Branch training camps were opened in Khulna, Comilla and Calcutta, in which the comrades of Barisal, Jessore, Khulna and Comilla were trained. Ninety Comrades were trained for officership of which 60 came out successful. In the training camp special attention has been given regarding maintenance of discipline in meetings and processions, stopping of looting and hooliganism, making the villages self-supporting, circulation of party policies through these works, and defence of the country by a united stand.



46 Secretary of State for India to the Viceroy of India

The Transfer of Power – Vol. III – Doc. 678

Mr Amery to the Marquess of Linlithgow

Mss. Eur. F.125/12

Private and Secret

India Office, 29 April 1943

[*Omitted: Para 1, on Sir Hassan Suhrawardy; and para 2, on Advisers to the Secretary of State* – Ed.]

3 I was much relieved to see that Nazimuddin has formed a Government, even though weak on the Caste Hindu side. It gets Herbert out of a situation awkward not only for himself, but also for both you and me, and I think he fully deserved the rebuke you administered to him. No doubt Huq had driven him to the limits of his patience, but one of the first things a constitutional Governor has to learn is infinite patience and a capacity for suffering not only fools, [Marginal Note – Ed.] *You're telling me!* – I. but rascals, with at any rate a modicum of assumed gladness. Curiously enough – or perhaps I should say symptomatically – the House of Commons has treated the matter with entire unconcern, and by the time it reassembles next week I don't imagine anyone will wish to raise it. The only thing, indeed, I may have to deal with in actual debate, i.e. on the Adjournment, is the case of the Kayyur executions,¹ though no doubt I shall have questions about Gwyer's judgment and the amending ordinance.

[*Omitted: Para 4, on Bahawalpur* – Ed.]

5. I am putting up to Winston a minute² on the subject of giving you the necessary powers outside your immediate Province as Governor-General, in order to deal with Political Warfare and other Resident Minister questions that may arise as things develop.

[Marginal Note – Ed.] – (*P.S.V. – Didn't I make clear that the R.M. must have a due share in military operation?* – I.)

1 See Docs 33, 34 & 43 – Ed.

2 Not printed.



47: Leaflet entitled 'To the Travancore State Congressites' from the CPI

Govt. of Travancore (Confidential Section) File No. 225/43/C.S.
[Kerala State Archives]

Dated 8.5.1943

Subject: General - Leaflet entitled 'To the Travancore State Congressites' printed at the Desabhimani Press, Calicut.

Police Department
Trivandrum 3rd May 1943

From The Inspector-General of Police
To The Chief Secretary to Government

Sir,

I have the honour to forward herewith for such action as Government may deem fit, copy of a Malayalam leaflet entitled 'To the Travancore State Congressites', printed at the Desabhimani Press, Calicut and published by the Secretary of the Kerala Committee of the India communist Party, together with a translation of the same. The leaflet was noticed in public circulation at Trivandrum and Kottayam.

Yours faithfully,
Inspector-General of police.

Translation

To the Travancore State Congressites.
To obtain food for the people - to secure an all party Government.
Cancel the civil disobedience resolution.
Respected friends.

You are the greatest patriots in Travancore. You are the people who have rendered the greatest selfless service to the country. It is your sense of freedom that gave you strength to hoist the flag of the Travancore State Congress despite even the rigorous repression. We the Communists who are working in the cause of freedom, are sending you our revolutionary greetings. We feel glad that you are able to come again in the midst of the people from the jail. We point out to you certain serious problems which have affected India as a whole and Travancore in particular and request you to meet these problems in the interest of the people. We believe that you who have suffered much and worked for the people, will come forward at this critical juncture also for safeguarding them.

Unite the People to Secure an A.I-party Government

We demand the freedom of our country. Demand a government in Travancore which is

responsible to the people. While efforts are made in this direction the German Fascism attacked Russia and Japan captured Singapore, Burma, Malaya etc., and tried to attack our country. We have learnt from the mean exploitation and devilish repression of the German in the occupied countries in Europe and Russia, what will happen to us if our country is also occupied by the Axis. We have seen the atrocities committed by Japan 'the rising sun of Asia' on the people of Manchuria, Korea, China, Philippine Islands, Dutch East Indies, Burma, Malaya and other countries, by her administration after subjugating them.

This is why the Indian National Congress and other national parties demanded that for the safety of India, a national government is essential to organise Indians so strongly that the Fascists could not enter here. Similarly our party demanded that in a maritime State like Travancore, which is in the radius of invasion an all party Government which is capable of uniting the people is essential. Though the other parties favour this demand, they do not openly support this, doubting whether this is possible or not. We say this is possible. Because to save India from the threat of invasion is not only a need of the people of Travancore and the people of India but also of the people of Allied countries. If the Travancore try with the united effort of the people of other parts of India and of the Allied countries, this can be achieved from the hands of an unwilling Government. The delay is due to lack of endeavours on our part in this direction. The communists in Travancore are trying their utmost for this. If you who stand foremost among the important parties in the land, also work in collaboration with the communists, the S.N.D.P., the N.S.S. and other important associations can be made to unite for this end. Thus the other sections of the people can also be united to collaborate with these parties. The Travancore Government, however retrograde and unwilling they may be, to part with power, will be compelled to accede to the united demand made by the lakhs of people, which is essential for the safety of the land. A national Government here which has the complete support of the people of Travancore can set an example to the people of India and pave the way for the establishment of a national Government. We therefore request you the freedom loving Travancoreans, to take the lead to transform Travancore into a free State which stands foremost in India.

Unite the People for Getting Food

Another problem which vexes the Travancoreans is the problem of rice, the food problem. If this problem is to be solved effectively India should have a national Government and Travancore an all-party ministry. This is possible only if the people are made to understand the matter and then secure sufficient land and monetary help necessary to produce a large quantity of food stuffs and industrial products. They should further secure a war allowance to the labourers and have a scheme of rationing brought into force. For this there must be a Government which deserve the confidence of the people. But it will be a mistake if it is thought that there is nothing for us to do till the formation of a national Government and that we need not make any efforts today itself to solve this problem as well as possible. If we try today itself we will be able to help the people very much towards uniting them making them understand the seriousness of the problem and to formulate people's committees.

The Government said that all the paddy should be entrusted with them. But highly influential Jummies are trying in various ways for escaping from this and earn money by selling paddy at enhanced rates and thereby plundering the people. This can be prevented by people's committees and volunteers. Thus after collecting the paddy available government have to be compelled to enforce rationing to distribute the same equally and properly among the local

people. People's food committees have to be worked to distribute the food materials to the people as per the ration system. Further vigorous propaganda has to be carried on through agricultural associations to produce more food materials. Endeavours have to be made to register more waste lands for cultivation, to get loans and to arrange for the disbursement of the same. By such endeavours the food materials available in Travancore and that can be produced here are properly collected together and arranged to be distributed, the sufferings on account of the food situation can be alleviated to some extent. Apart from this the people should request the India Government to allot a rice quota from outside to solve the rice problem in Travancore which affects the safety of the country.

You should realise the gravity of this food problem. This will lead our country to great internal struggle and dacoity. This leads us to serious cutting of throats between Ezhava and Nair, Christian and Hindu and those having food to eat and those who have not got the same. Our houses and women will be controlled by rowdies. If we do not act at present and rise equal to the occasion it will lead us to a state in which there will be no go, except to regret at the loss of the opportunity. To bring about a change in this situation, the State congressites who are now outside, the members of the S.N.D.P., the N.S.S. the Muslim League and the Trade Unions, the M.L.As. Bishops and others should call up a conference of all the peoples organisation and public men interested in this problem and chalk out a programme.

This conference should request the Government to release the remaining state congressites and communists in the jail who are prepared to work for the food problem.

Similarly the Government may, realising the seriousness of the problem, be requested to allow the freedom to conduct public meeting for propaganda work.

Withdraw the resolution regarding civil disobedience

What is it that has to be done foremost for this?

Realising the new circumstances which have arisen in India after the correspondence between Gandhiji and Viceroy the civil disobedience resolution accepted by the State Congressites in the all-Travancore Congress committee meeting have to be cancelled.

This resolution is a weapon which help Government to keep the leaders in jail and to suppress the civil liberties of the people. The meaning of the cancellation of this resolution will be the taking away of the weapon from the hands of the Government.

When Gandhiji has made clear that the Congress is not responsible for the destruction and struggle that prevails in the lands, there is no reason why this resolution could not be cancelled. State congress passed the resolution of civil disobedience on the impression that the riots that sprung up in the land is the result of the resolution passed in August 9th in the All India Congress committee at Bombay. There is no meaning in continuing this resolution when the Gandhi Viceroy correspondence has revealed that Government are responsible for these riots.

Travancoreans could not stand united to solve the food problem and to favour an all-party Government unless the State congressites and other leaders inside the jail come out and then civil liberties are restored.

The first step to this is the withdrawal of civil disobedience resolution.

Example of Baroda

Is it possible to restore civil liberties and obtain the release of the leaders by the withdrawal of the civil disobedience resolution? Surely this is possible. Baroda is an example for the same. As a result of the statement of Srijit Chottalal Satharia, president of the Baroda Praja Mandal from inside the jail that destruction and struggle are not policy of the Prajamandal, the Baroda

Government have released all political prisoners. The following are the conditions of settlement arrived at between the Prajamandal and the Government:

1. Lifting the ban on the Prajamandal.
2. Return of the properties seized from the Prajamandal.
3. Government will take action against the Police if the Prajamandal can prove with strong evidence that the Police have committed atrocities.
4. All these arrested during the time of the agitation will be released and the fine imposed and realised will be returned.
5. All the bans placed on the organisations during the time of the agitation will be withdrawn.
6. The Prajamandal ought to oppose all sorts of destruction.

This is a great success for the people of Baroda. This is how the Government was compelled to terminate the chaos in Baroda.

Sh C.P's Government will have no justification in suppressing civil liberties or in keeping the leaders in jail if you withdraw the civil disobedience and come forward for co operating to help the people to tackle the food situation.

We request that you will come forward to discharge your patriotic duty towards your countrymen who are starving or are half starving in Travancore owing to the food difficulties.

Calicut 8.4.43

Yours obediently,

P. Krishna Pillai

Secretary to the Kerala Committee of the Indian Communist Party

48: Warning to be sent to the Editor of *Janasakti*

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 889

[TNA]

Letter No. 1375/43-1.

Dated: 7.5.43.

To
The Convener,
Madras, P.A.C.

Sir,

With reference to the resolution passed by the P.A.C. at its meeting held on 3.5.43 regarding the *Janasakti*,¹ I am to say that the government approve of the recommendation therein. Please convey the severe warning to the editor of the 'Janasakti' and to send the Government a copy of your letter conveying the warning.

Signed (illegible)

7.5.43

49: The Viceroy to the Secretary of State for India

Linlithgow Collection – IOL Mss Eur F 125/24

[NAI]

To

The Right Honourable L.S. Amery, P.C., His Majesty's
Secretary of State for India

The Viceroy's House,
New Delhi
May 10th, 1943

(Private & Secret)

I am very sorry indeed to hear that you have been subjected by the *Daily Worker* to libellous attacks in connection with the Kayyur executions.¹ The political aspects of this case (I am sending you by this bag a brief note on it in case you have not seen an account²) were brought to my notice when I had the petition for mercy presented on behalf of the people who were sentenced to death before me for consideration. There is no doubt that the murder was a singularly brutal one, and that there was nothing in the circumstances to justify the many representations that were sent in on behalf of the petitioners, or the agitation engineered by the 'communist' Press here on their behalf. Generally speaking, other papers have taken little notice of the executions, and I think it is not very creditable that so many people seem to have been found willing in England to take the matter up. I wonder whether you have been able to give publicity to the details of the murder? They were gruesome enough in all conscience.

1 See Doc. 33, 34, & 43

2 Not printed.

50: Government of Madras to the Government of India (*People's War*)

Govt. of Madras Pub. (Gen.) Dept. 1943 - File G.O. No. 889

[INA]

The Secretary to the Govt. of India, 13.5.3
Home Department (with enclosures)

Sir,

Newspapers & periodicals – 'People's War-Objectionable articles.

In continuation of this Govt's letter No. 14119-2. Pub. (Gen.) dated 9.4.43¹ No. 889/25/3/43. I am directed to forward herewith a copy of an article entitled 'Salute to the Kayyur Heroes'² published in the *Peoples' War* dated 4.3.43. I am to add in this connection that a security of Rs 1000 has been demanded from the Malayalam paper *Desabhimani* of Calicut for publishing a similar article (copy enclosed) and that a severe warning will be administered to the editor of the Tamil paper *Janasakti* for publishing another article of the same kind (copy enclosed). This is reported to the Govt. of India for information and such action as they may think fit.

G.W. Priestley
12.5.43.

1 Not printed.

2 Doc 33.

51: Government of India to the Government of Bombay

Govt. of Madras Pub. (Gen.) Dept. 1943 - File G.O. No. 2214

[TNA]

Do. No. 7/17/42 - Poll (I)

Govt. of India

Home Department

New Delhi, the 20th May 1943

My dear Symington,

Please refer to your demi-official letter No. S.D.III 540 of the 9th of April.¹ We hope that you will continue to keep a close watch on *People's War* as also other publications of the communist Party of India with a view to taking action against it under the Indian Press emergency Powers Act. From reports which we have received, it is clear that other Provincial Govts. are becoming seriously perturbed at the tone the paper has been adopting. We agree that the clever technique employed by the paper in presenting its anti-Govt. propaganda may render this difficult, but a scrutiny of the recent issues of this paper has not shown any reason to alter our opinion previously expressed to you that the first opportunity of firm action to improve its tone should be taken. In this connection we should like to draw your attention particularly to the article entitled 'Kayyur's Heroes on Eve of Execution' on the front page of the issue of April 11.² It is nothing more from beginning to end than a glorification of convicted murderer. It contains contemptuous references not only to the action of the executive Govt. but also to the disposal of this case by the judiciary themselves.

There is also the issue of 28th March, 1943 which in the articles 'who strangles the patriotic press' contains the passages. 'There is no other reason for such a drastic reduction in shifting space for newsprint when it appears that every day that no less than 3 steamers arrive at Bombay from American & Canadian Ports'. This would appear to give information of value to the enemy.

² We would strongly urge you to consider, in consultation with your legal advisers,

demanding security under section 3(3) of the 1931 Press Act on the Grounds (inter alia) that the Kayyur article is within the mischief of Section 4 (1) (b) of that Act. You may be able to add other material as a basis for such a demand.

3. We fully approve of your intention to bring indirect pressure to bear upon the paper by such means as you suggest in your last paragraph and we are considering your suggestion that similar pressure might be exerted by holding up the supplies of newsprint.

Yours sincerely,

R. Tottenham

To

D. Symington, Esq., I.C.S.

Home Sec. to the Govt. of Bombay

Copy forwarded to the Chief secretary to the Govt. of Madras for information with reference to the letter No. Ms 889 dated 25 March 1943.

By order

Under Secy. to the Govt.

1. Not printed. 2. Doc. 43. 3. Not printed.

52: Government of Bengal to the Government of India regaining Labour Party of India

File No. 12/1/43 - Home Poll (I)

[NAI]

Confidential

Bengal Secretariat,

Calcutta,

The 20th May, 1943.

D.O. No. 421 DS.

My dear Tottenham,

Please refer to your demi-official letter No. 12/1/43 - Poll (I), dated the 9th April, 1943.¹ The Labour Party in this Province has not so far hindered the war effort and there is no objection to the cancellation of the order of the Central Government against Mr Sisir Roy.

Yours sincerely,

A.E. Porter

Sir. Richard Tottenham, CSI, CIE, ICS,
Additional Secretary to the Government
of India, Home Department.

1. Not printed. Also see chapter II Docs 34, 36, 37 & 39.

53: Extract from *Janasakti* (Tamil)

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 2214

[TNA]

Janasakti,
26.5.43

The World's Praise for the Kayyur Heroes (Persons who made sacrifices)

The Paper writes:

The patriotism of the Kayyur Comrades has become world famous. There is not one that has not praised their courage, their eagerness for service to the country and their sacrifices for the defence of the country. Their names are heard in India in every corner and street, village & town. They are great patriots. Thought of the country was their only anxiety till the last moment.

Below is an interesting example to show how far they have instilled patriotism through out the country. Comrade Sajjat Jagir was invited to a student friend's house in Delhi. Two men from that family are in jail. Another member is doing the work of the party from without. The daughter (of the house) is a sympathiser of the party. In these circumstances, Jagir was afraid that the mother of the family might be angry with him. He hesitated even to talk. But the student would not leave him. He went to his house unable to refuse the invitation. But he saw that the position was quite different there.

The house was indeed a small house but beautiful. Sajjat Jagir and others sat in a room. It was adorned with the Red flag. This was a present to that Comrade for his work during the week. When dinner was over, a boy gave him (Jagir) Rs 5 for the Kayyur comrades fund from the mother. Words failed Sajjat Jagir. This devotion of the mother, who had sent two sons to the jail, was indeed unexpected. All the members of that family read the 'Khowmin jung' the organ of the Indian Communist Party. They are Muslims.

A number of incidents like this have happened. A fund is being raised even in England. Eminent members of Parliament and Communists are working for this with interest. Lord Strabolgi, Sorensen, B.G. Forster, D.N. Pritt, Livingstone, Reginald Bridgeman and others have nominated P.C. Joshi Secretary of the All India Labour Union Congress, and comrade Mohan Kumaramangalam, communist leader of Tamilnad, to hand out the funds collected to the families of the Kayyur Comrades. This only shows how much interest is shown by even the people of Britain in the matter of Indian Independence.

27.5.43



54: Somnath Lahiri to P.C. Joshi (intercepted letter) dt 17.6.43

Govt. of Bengal (Home) File No. SR/506/43
[Bengal State Archives]

Special Branch (I), C.I.D.
Bombay, 28th June, 1943

Verv Secret

In reply please quote No. 7332/B-1038

Interception Report

(The Secrecy of the interception may kindly be safeguarded)

- | | |
|-----------------------------------|---|
| 1. Post Office of Interception: | Girgaon, Bombay 4. |
| 2. Date of Censorship: | 21-6-43 |
| 3. Sender's name & address: | Provincial Headquarters Bengal Committee, Communist Party of India, 249, Bow Bazar Street Calcutta. |
| 4. Post mark date: | Calcutta, 18 Jun 1943 |
| 5. Date of letter: | 17-6-43 |
| 6. Language of letter: | English (Typewritten) |
| 7. Addressee's name & address: | P.C. Joshi, 'The People's War', 190-B, R.K. Building, Khetwadi, Main Road, Bombay - 4 |
| 8. Whether withheld or delivered: | Delivered |
| 9. If delivered, copy kept: | Copy kept |
| 10. Name of Censoring Officer: | G. Gomes, Sub-Inspector of Police, Special Branch (I) C.I.D., Bombay. |

Dear Joshi,

I had fever for a day only after I came back here. Recovered and picking up. Though no physical strength and very little vitality; I am using this month as a rest-cure, only eating and sleeping doing hardly any work.

Ministry and Ourselves

The political situation is rather complicated. First, about League Ministry and its doings. We rightly raised the slogan of united Ministry and rightly characterised as disruption the way League Ministry insisted on forming a sectional Ministry only. But in view of the mass basis of the League and therefore its amenability to positive mobilisation of the people we had a positive policy of (1) Positively mobilising the people for the programme of the food, civil liberties, civil defence, etc. that the Ministry had announced; fighting the weakness of the Ministry to succumb to Bureaucratic pressure; popularising and mobilising the people to cooperate with very positive measure initiated by the Ministry. (2) Not supporting the factional opposition of Haq — Shyamaprasad, but utilising the above popular mobilisation to bring the

Congress and the League nearer, at least creating an understanding between them on food, civil Defence etc. and work this on towards a united Ministry with Congress support.

This policy had some success in that (1) In the beginning the Congress Party could be prevailed upon not to join the factional opposition but remain neutral (2) The Ministry had to initiate some popular measures, viz., some of our internees have been released, permission for meetings easier, rent is going to be controlled in Calcutta (3) Ordinances for making untitled land available for growing more food.

Ministry on Food Front

In the food front the ministry in the beginning seemed like surrendering to the bureaucracy (who wanted things to continue just as they were) and the hoarders (who wanted the same). So in the beginning it took no measure but hoped only to get some supply from outside and with the help of that plus 'psychological' propaganda against hoarding, to bring down prices in the market. Both outside supply & propaganda failed.

But nevertheless, due to insistent mobilisation and agitation from our side the number of and supply to controlled shops in Calcutta were increased. We criticised the ministry for not taking effective steps and went on mobilising the people behind the positive programme of the ministry. The ministry was feeling the pressure from its own supporters too. In the beginning it formed food committees under Govt. auspices to look after supply, distribution etc. in controlled shops, and generally they wanted co-operation from local people. We were able to get in to many food committees and in several cases secured their co-operation in food supply etc. All this meant that the ministry had extended the scope of popular co-operation on the food front, though not sufficiently. This too was partly the success of our positive policy.

Huq Shamprasad's Propaganda

Huq and Shyamprasad were playing the factional game of anyhow discrediting the ministry. They were also sheltering the hoarders. Their propaganda or insinuation was there is no rice in the province, everything has been grabbed by the army, so ministry must bring rice from outside the province by arrangement with the Central Government, which meant there are no hoarders in the province. They kicked up communal jealousies against the ministry too and preached that this ministry was a tool of the bureaucracy. This propaganda gave plea to hoarders to pose as anti-bureaucrats, i.e. they justified their hoarders on the plea that we are hoarding not to starve the people but to bring down the collapse of this vile ministry and Govt.

We did not Come out Sharply enough against Factional Opposition

Our mistake during the 1st month of the ministry was that we did not come sufficiently sharply against this factional opposition, nor exposed them, nor emphasised the positive achievements of the people through the ministry as against this misleading propaganda. Result was (1) We lost initiative to a certain extent on the food front; Huq Shyamprasad joined by Nalini Sarkar got an opportunity to pose as the champions of the people for food - though actually they were sheltering the hoarders and only fighting the ministry for factional leads (2) Congress Party became confused and leaned more and more towards them (3) League supporters began to be indifferent to our efforts for positive mobilisation behind ministry's programme.

Ministry's Anti-hoarding Drive

We corrected this mistake. The pressure from its own followers as well as need to counter

act the factional opposition also told upon the league ministry. They have initiated the anti-hoarding drive, which means a week-long investigation in every village and town (except in Calcutta & Howrah) by special food squads to find out stocks of hoarded rice (stocks in excess of a family's 6 months requirements is called a hoard) to take a complete census of food stocks available and of actual food requirements, to organise food committees on territorial basis, to introduce where necessary a more equitable distribution through the food committees. After this is done the big hoarders stocks may be confiscated, the rest to be persuaded by moral pressure to sell or to loan it to the needy. The supplies of rice in a locality will at first be utilised to serve the needs of the locality itself and only after its needs have been satisfied may the rice be taken to other areas.

Opposition's Criticism

This caused panic among the factional oppositionists (for it hurt their proteges, the mofussil hoarders, and it might also debunk their Pol. propaganda that there was no rice in the province, a propaganda meant mainly to fan the anti-war prejudices of the people). They condemned it as the ministry's attempt to shift the burden of the crisis on the poor consumer, and as the inability of the ministry to secure rice from outside. They also criticised why Calcutta and Howrah, where there are big hoarders have been left out, if it be really an anti-hoarding drive. Kiron Sankar¹ also was taken in by their propaganda, signed their joint condemnation. In most districts, Official Congressmen refused to have anything to do with the food committee, and their drive and in some cases even resigned from the Janaraksha Samities protesting against the Samiti's co operation in the drive.

We Support the Drive

We sharply attacked their move of the oppositionists as giving shelter only to the hoarder and supported the drive. Of course we said that Calcutta & Howrah also should have been included, but that is no reason why we should not support and carry it out elsewhere (Nazimuddin in a discussion with Bankim and myself yesterday said that they excluded Calcutta & Howrah in the beginning as a 'Machiavellian' tactics as it would have raised a howl in the opposition if the ministry had started it now; due to their omitting it the opposition itself is demanding the measure in Calcutta and Howrah which suits the Ministry fine) It seems that similar measures might be introduced in Cal. & How. after the mofussil drive has ended — though one cannot be sure. Partly this and partly the pressure of the League hoarders at Calcutta might have been causing the vacillation of the ministry with regard to Calcutta & Howrah.

Though the Govt. food committees are not inviting the official representation of any popular organisation or part in the drive, nevertheless by popular pressure we have got into them in most of the districts. The drive is still on. Final reports will be sent by the squads to the Govt. on the 20th or later. Meanwhile, the immediate good effect of the drive has been that hoarders have been trying to dispose off their stocks in the local markets, with result that from most of the districts increase in stocks for sale and decline in prices is daily reported (even in the pro-opposition papers). But this may be a temporary phenomenon only. Because in many cases one hoarder is buying up another panicky hoarder and sending hoard to Calcutta area for safe deposit.

With all these we have got back initiative to some extent. With these things we were able to induce Kiron Sankar, after their statement of condemnation of the drive, to issue another

statement (jointly with Huq, Shyama, Nalini etc. — which was due to Kiron Sankar's efforts) saying that they were not against unearthing hoards and for this purpose as well as for protecting the consumer the public should co-operate with the food committees in the drive whenever possible. That was another favourable factor for our regaining initiative on food front. At Calcutta too we have started a Food Week to culminate with a rally on 20th mainly for the purpose of getting the drive initiated at Calcutta & Howrah too. But at Calcutta our Janraksha Samities are very weak, do not include any prominent League or Congress elements, and are known to a very small section of the people.

Political Complications

We have not yet been able to bring Congress back to the old position of neutrality though we have been able to prevent an immediate line-up with the factionalists. Shyamprasad has become the worst demagogue and disrupter, almost like Subhas in the days of Ramgarh and after. There seems to be a curious development in the Hindu Sabha as well, though we have not enough facts to come to a conclusion. Some R.S.P. men got into a food queue as Hindu Sabha volunteers and tried to work up mischief. Is the Sabha or Shyamprasad moving towards an understanding with R.S.P. (i.e. F.C.)? I am not sure.

New 'Line' of Struggle-wallahs

The underground B.P.C.C. (I think the Official struggle Wallahs) have distributed handbills. They say sabotage now, not violence. But Satyagraha, hunger marches, no rent, anti-war agitation and fighting the Communist who are helped by the Government. Therefore Congressmen should enter into and organise labour unions, kisan, student and women organisations and fight the disruptive communists there.

And its Practice

This seems to be the new move of the struggle-wallahs who are not yet F.C. In the Bengal Provincial Trade Union Conference two such elements, Jnananjan Neogi and Maitreyi Bose (1st one is an old Swadeshi now curator of Corporation Museum, second one a Doctor, Lady) both connected to some extent with Dr Suresh Banerjee, but with the other struggle elements too. They control struggle funds at least some. They have never before in their life been seen anywhere near labour organisations, came in through Dr Suresh Banerjee's Union, made a mark with the rest of the groups . . .

I have not yet been able to see Kiron Shankar and ask him if he knows anything about this. I am in a hurry, so I will finish here, propose to send you similar gossip letters every week or as near to as possible. Many of the facts here are either guesses — so don't use things from this for the P.W.³ But of course they will help you to come to a political evaluation of events in Bengal.

Oh, I forgot to mention another thing. There seems to be a bit of stagnation in Party life — here as well as mofussil. Somehow the old campaigning fervour seems to be getting lost.

Signed
(Lahiri)

Special Branch (I), C.I.D.,
Bombay, 28th June, 1943

Secret

No. 7332/B -1038

Copy forwarded with compliments to:

1. S.C. Gyan Brar., I.P., Asstt. Director, Intelligence Bureau, Home Department, Government of India.
2. The Dy. Commissioner of Police, Special Branch, Calcutta.

Signed
Dy. Commissioner of Police,
Special Branch (I), C.I.D.,
Bombay

- 1 A reference to congress leader Kiran Sankar Ray *
- 2 F.C. Means Fifth Columnist.
- 3 P.W. is abbreviation for *Peoples' War*.

55: Muzaffar Ahmed to the Communist Party of India (CPI - office) (an article in *People's War*)

Govt. of Bengal (Home) File No. SR/506/43

[Bengal State Archives]

People's Way to Break Deadlock

Non-Congress Ministries to replace 'Advisers' Rule'. In the former Congress Majority provinces – Is Bureaucracy's way to 'End the Deadlock'.

In Reality it is disruption – A smoke screen to hide continuance of the Deadlock in a new way.

People's Way is to move the masses for forming real coalition Ministries with or without Congress Participation but with Congress support, pledged to work for crisis – For Congress League Unity and for National Government of National Defence.

That will foil bureaucracy's game and will spell the doom of the deadlock.

It is no longer a secret that the ministry making that is proceeding in the remaining provinces of Advisers' Rule, and which are all provinces with Congress majority is proceeding according to a unified plan. It is bureaucracy's plan to end the deadlock. In the North West Frontier Province a League ministry is already functioning in place of the Adviser's Rule which followed the resignation of the Congress Ministry 3 years back.

What is behind this plan? The bureaucracy think it has flattened out the Congress and crushed its 'Open rebellion' which started on August 9. It thinks it can now crown its victory by replacing the blatantly 'unpopular' Advisers' Rule by 'popular' non-Congress ministries. The reason is obvious. The public opinion in Britain and America is growing insistently loud and emphatic on the need and urgency of ending the deadlock in India. But the bureaucracy does not but it certainly wants to bluff. The move to form non-Congress ministries in every province and to pass them as popular ministries is that bluff. It is the smoke screen it wants to put up to hide behind it the ugly reality of the dead-lock.

It not only wants to thus silence its critics in Britain and America, but it also wants to deal a blow to the growing forces of National Unity in India which are working for breaking through the stalemate. The bureaucracy wants to drive a wedge between all the non-Congress parties on the one hand and the Congress on the other. The moment non-Congress ministries come into existence in the provinces where formerly the Congress majority had formed ministries, Congressmen will begin to fight them. This calamitous result is already visible in the North West Frontier Province. Several bye-elections are being fought out between the Congress and the League. The slogans with which the Congress is enlivening the elections are: 'We want to continue the deadlock — we want to oust the usurpers from the ministry'. The Congress and the League are at loggerheads. And who profits by it? None but the bureaucracy.

Not only this. The ministry move is creating a fissure in the ranks of Congressmen as well. A section of Congressmen are dis-illusioned with the 'struggle'. But they do not yet see why the 'struggle' failed. They do not yet see that National Unity and National Defence is the only way out. Thus out of the sheer demoralisation, a number of such Congressmen may go over to this ministry move sponsored by the bureaucracy. Nothing will suit the bureaucracy so well as such demoralisation and split in their ranks. They expect that what happened in 1923–24 and to a certain extent again in 1933–34 may repeat itself again.

Such then are the implications of the bureaucracy's plan to form non-Congress ministries. It is a game to blow up National Unity to split the Congress and to continue the deadlock behind the screen of fake popular ministries.

Forward to a Campaign for People's Coalition Ministries

A positive solution for the deadlock therefore today is to launch a broad-based popular movement for forming Coalition Ministries in all provinces. These ministries can today be composed of all non-Congress parties and provide for the later inclusion of the Congress also, but they must have the support of the Congressmen.

These Ministries should pledge themselves before the people

- To work for the release of Congress leaders and for lifting the ban on congress organisations.
- To solve the food problem in close collaboration with People's Food Committee consisting of representatives of all sections of the people.
- To strengthen National Defence by fighting the Fifth Column, rousing the people to patriotic participation in Civil Defence measures etc.
- To support the demand for National Government based on Congress-League unity.
- To further the cause of National Unity by getting the support and co-operation of Congressmen for the programme which the Ministry carries out.

Such a programme, if accepted by the Ministry, will upset all calculations of the bureaucracy. For it will not be a docile Ministry carrying out the mandates of the bureaucracy but a popular ministry carrying out the needs and desires of the people and therefore a Ministry which will have popular support and can never be brow beaten by the bureaucracy.

A mass campaign in the country for such a programme and for such a Ministry will prevent disruption between Congress and non-Congress parties, will save the country from a Civil War between Ministerialists and Oppositionists. It will, in fact, create the basis for unity between the different political parties in India and thus build up National Unity.

A Ministry that either arises out of such a mass campaign or, after having been formed,

pledges itself to such a mass movement will be an instrument of the people for Unity, Defence and Freedom. A mass Movement which can throw up or influence such a Ministry will be a powerful force against which all Amerys and Linlithgows will break their heads in vain.

Communist Party's Lead

The Communist Party has therefore no hesitation in declaring that it will support such Coalition Ministries in all provinces. It is already supporting the League Ministry of Bengal which has adopted and is implementing a programme similar to this. It is launching a campaign in the province of Madras for the formation of such a Ministry. It is endeavouring its best to gain the support and co-operation of Congressmen for such a Ministry. It will do the same in every other province

The Communist Party calls upon Congressmen in every province to join this campaign for Coalition Ministries on such a programme. It impresses upon them that it is only by getting such Ministries formed and rousing the people behind it that the formation of anti-Congress Ministries can be prevented. Such Ministries based on the support of such a mass campaign will be the most effective way to get the Congress leaders out; the unity of political parties on a provincial plane on the basis of this programme and behind such a Ministry will prepare the ground for all parties unity on a national plane for National Government.

The Communist Party appeals to the Muslim League to see that the Ministries formed or supported by it should resolutely set their face against being turned into anti-Congress Ministries. It urges on the League leaders that the more they make their Ministries fight for the release of Congress leaders the more will they smoothen the path of winning self-determination. It is by trying to get the support and co-operation of Congressmen and fighting for what the Congress is fighting for — National Government — that the League can get the support of Congressmen for its own programme. The League will grow in prestige and strength by helping its brother Party, the Congress, out of the political deadlock.

The Communist Party urges all other parties in all provinces to come forward and rouse the people by making their foremost demands — Release of Congress leaders, solution of the Food Problem, Congress-League Unity and National Government — the main plans of the programme on whose basis they form Ministries. It is firmly convinced that this is the only way in which they can serve the nation and therefore strengthen themselves.

This alone is the path which any patriotic party can take today. For it is the one path.

- for the solution of the deadlock
 - for serving the people
 - for bringing them food
 - for defending the country
- for paving the way to National Unity and National Government.

Address on Cover:

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The Communist Party of India,
190B, Khetwadi Main Road,
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Com. Muzaffar Ahmed,
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56: Communist Survey (July–October 1943) (extracts)

File No. 7/23/43 – Home Poll (I)

[NAI]

Relations with the 'Fifth Column'

July passed uneventfully with the rank and file struggling dutifully to master the intricacies of the 'left nationalist deviation' and in the latter half of the month the party propagandists bent all their energies towards preventing a recrudescence of the 'Quit India' disorders which they were convinced had been planned by their rivals the Congress Socialist Party, Revolutionary Socialist Party, Forward Bloc and the Trotskyists whom they brand as a 'fifth column'. (A recent party letter however admits that many communists have made the 'crudest mistake' of classifying all persons who disagreed with them as fifth columnists!) [*Marginal Note by R. Tottenham – Ed/ – True.* Fortunately the tranquillity of the August anniversary provided no occasion to test the sincerity of communist professions, but this did not prevent the Party from making the absurd claim that its counter-propaganda was mainly responsible for the failure of 'fifth column' plans. The 'fifth column' was deeply incensed and, lacking a better outlet, vented its spleen in illegal leaflets virulently denouncing the Communist party of India; in Bengal and Assam, where party feuds have been simmering for years, the rival groups had recourse to violence and one communist was murdered in Mymensingh. Undeterred by opposition, the communists continued their counter-propaganda and chose the Congress Socialist Party for special condemnation as 'Tojo's advance guard'; 'People's War' even took the bold step of naming the Congress Socialist Party leaders. Previously, the communists were inclined to keep their allegations against the 'fifth column' on an abstract plane as far as possible and it is significant that although they claim to have been waging a life and death struggle against allegedly pro-Japanese elements for over a year, they have always been careful not to enlist the support of the authorities in their campaign. One Punjab communist is reported to have advised the local comrades to expose the 'fifth columnists' to the public but to leave it to the public to hand them over to the police— a singularly unhelpful suggestion. Doubtless the communists feel that direct recourse to the authorities would damn them in nationalist eyes and convince their critics of the truth of the slander that they are in Government pay. Another token of communist insincerity is their emphasis on the supposedly great menace of the 'Trotskyists'. The principal 'Fourth International' groups in India at present are the Mazdoor Trotskyist Party and the Bolshevik–Leninist Party of India and Ceylon, both of which are feeble in the extreme. (The latter group was severely weakened by a round-up in Madras, Bombay and Ahmedabad between July and September when nine Ceylonese Trotskyist absconders and eleven Indian accomplices were arrested). Nevertheless, despite the ill-feeling that exists between the Communist Party of India and the 'struggle-wallahs' it is not unknown for the local rank and file on both sides to meet in more or less amicable discussion, and one Bengali communist is reported to have stated at such a meeting, when asked what his attitude would be in the event of an invasion by Subhas Bose, that if Bose came accompanied by or as an agent of the Japanese, he would resist him, but if he came purely as an Indian leader with the sole purpose of liberating India, he would welcome him: Such views are, of course,

not surprising since the average communist hopes that if the war does not deal a death blow to imperialism, post-war conditions in India will produce a situation allowing full outlet for his pent-up revolutionary urge. If Bose can possibly accelerate matters, so much the better: . . .

Finance

8. The communist leaders have several good reasons to be dissatisfied with the state of Party funds. Since the middle of the year, the weekly circulation of '*People's War*' has dropped from 34,000 to 24,000 copies, involving a monthly loss of Rs 4,500 which is stated to be partly compensated by the profits of the Peoples Publishing House. (The Party, however, would like it believed that no 'political conclusion' can be drawn from this evidence of public indifference and that the inefficiency of sales agents is the root cause). Party letter 16, dated 12.8.43, revealed that most of the Provincial Committees were facing a 'financial crisis' (a fact which was borne out by secret reports) and expressed doubts whether the 5 Lakh Fund would be realised since only Bengal and Andhra had started collecting. There is, nevertheless, little danger of a complete financial collapse. The party has as yet not made serious inroads into its capital, the Central Committee is believed to have a stock of over one and half lakhs worth of paper, and in any case many of the leaders have sufficient private means to subsist without drawing on the Party's funds. The Party has always had a remarkable capacity for existing on the most meagre resources. In its illegal days before the War, it was known to obtain a regular income by blackmailing Bombay millowners and other capitalists under threat of strike action, an art in which S.A. Dange' was particularly adept, but it is doubtful whether this technique is still employed profitably in view of the present insistence on increased production and avoidance of strikes as a part of the communists' pro-war policy. This disadvantage, on the other hand, is perhaps outweighed by the increased facilities for collecting money which the Party enjoys under conditions of legality. (An interesting report from the Punjab suggests that out of the Provincial Organising Committee's income of Rs 1410 for the month of August no less than Rs 925 is believed to be donations from sympathetic military personnel). . .

The Party's Critics

13. Meanwhile, the communists' overtures have gone mostly unheeded by the premier political parties. The public attitude has ranged from complete indifference to their pro war utterances to mild interest in their food campaign and occasional resentment over their denunciation of the 'fifth column'. They have incurred criticism even in friendly quarters for the unrealistic nature of some of their propaganda. In a statement dated 26.8.43, written specially for her son, Mohan Kumaramangalam, and the other communist leaders, Mrs Subbarayan' pointed out that 'the ordinary man or woman patriot who knows no political history or geography but that of his own village or at the most of his country, is unable to understand your Party's policy on this war. He is on the other hand impressed by the arguments advanced by friends in the Congress against your Party's policy. They remind people that your Party now contradicts their own declarations made even as late as 1940. . . . It is pointed out that the communists who called our soldiers 'mercenaries' till two years ago, now applaud these very soldiers as 'heroes' and 'patriots' and when all our millions are starving they want to clothe and fatten the white army people who are here to terrorise and suppress us . . . Remember that the ordinary Indian does not know about Marxism or Fascism, of Hitler's Germany or Stalin's Russia or even China. . . . '*People's War*' should not be guided only by the reports and views of your provincial Committees or workers. They are mostly very young and

wonderfully enthusiastic but are not mature enough to realise that much thought and study is necessary before expressing, in public, opinion on matters of grave importance to the country.' Whether this advice left any impression on P.C. Joshi and the others is not known. They are in any event, too deeply committed to the 'pro-war' policy to perform any more somersaults for the time being and all the available evidence tends to show that the party is determined not to jeopardise its sixteen months' old legal status until it has derived the maximum benefit from 'open' activity and certainly as long as the present deadlock continues and the Axis Powers remain undefeated. (It is interesting to note, however, that there have been indications that the Communist Party of Great Britain, from which the Communist Party of India derives inspiration, may modify its present policy of co-operation with the British Government once Germany is completely defeated and Russia's safety is ensured. The Indian communists on the other hand, are rather more pre-occupied with the menace of Japan and might not react to the termination of the war in Europe in the same manner or as quickly).

14. Nevertheless the communists are not likely to turn a deaf ear to the criticism, remarkable if not in volume at least in variety, which has assailed them, in the past few months. The 'fifth column' contribution has ranged from hysterical abuse to well-argued leaflets such as those published in July under the title 'Satyagrahi' by Annada Choudhury, the absconding Congress leader of Bengal. In September Dr Shyamaprasad Mukherji, ex-Minister of Bengal, irked by the communist support to the present Ministry and criticisms of his approach to the food problem published a booklet entitled 'The Bengal Communists' in which he went to some pains to prove that the Communist Party of India was hypocritical in its 'pro-war' policy and in its attitude to the Muslim League. A little later, Master Tara Singh, the Delhi leader, publicly denounced the communists as 'amoral atheists'—the reason for his outburst was apparently their effrontery in meddling in Gurdwara elections. And, finally, we have the following tirade by Miss Margaret Pope in a rabid article condemned for publication by the Special Press Adviser, Bombay:

I accuse the so called Communist Party in India of condemning itself to impotence by creating such gulfs of bitterness between itself and the Nationalist parties that co-operation has now become impossible. I further accuse the Communist Party of willfully neglecting its revolutionary doctrines preached so fervently till the time came to practise them, and for selling its souls to its enemies for a mess of 'Peoples War', freedom from arrest and a doublefaced policy of love and hate towards the Congress Party. My accusation against the Communists is bitterest because they, as the most self-conscious political body, should have known better than to fail the people in the hour of their greatest need.

Criticisms of this nature do not necessarily imply that the communists are beginning to make their presence felt in Indian politics. In the prevailing lull in political activity no voice, however feeble, goes unheard; and the unrestrained volubility of the communists, if nothing else, has compelled some measure of attention. But there seems little doubt that once normal political activity is resumed, the Communist Party will rapidly have to adapt itself to a humbler and less independent role than it at present claims to be playing.



57: The Government of Madras to the Convener, Madras Press Advisory Committee

Govt. of Madras Pub. (Press) Dept. 1943 - File G.O. No. 2214
[TNA]

Pub. (Press) Dept.
Letter No. 881/43-4.

Tamil dated 5.7.43 - 1943

To
The Convener
Madras Press Advisory Committee.

Sir,

Ref. Newspapers & periodicals - *Janasakti* - objectionable articles - Meeting of the Madras Press Advisory Committee held on 29th June 1943.

With reference to the recommendation of the Madras Press Advisory Committee regarding the '*Janasakti*'. I am directed to say that the Government regret that they are unable to accept it. (The article on the Kayyur prisoners taken with the article about the A.R.P. in Bangalore shows clearly that the Editor of the '*Janasakti*' is quite irresponsible). In the article on the Kayyur prisoners, he praises the patriotism of the villagers who set on and murdered a constable. In the article about the ARP, in Bangalore, he writes:

'The control of rationing is in the hands of the ARP personnel. Rice is supplied only to those who offer bribes.'

The Government consider that the Editor has gone too far and they have decided to demand a security of Rs 500 for its article on the Kayyur Case.

Chief Sec.

1 Doc 42.

58: Governor of Bengal to the Viceroy

Linlithgow Collection
[NAI - Acc.No. 2336]

From H.E. Sir John Herbert. Governor of Bengal.

*Govt. House, Calcutta
July 7th, 1943.*

Dear Linlithgow

This is my report for the second half of June. I enclose the Home Department report for that period.¹

[Omitted: Para 1 on food, Para 2 on Irrigation, Para 3 on Chinese and also para 4 – Ed.]

5. C.P.I. – A recent bus strike in Calcutta revealed that the same agitators who engineered a tram strike and who attempted to cause a taxi strike were responsible. They belong to the Communist Party; and although one is reluctant to indict the Party as a whole there is little doubt that in the Calcutta Area members of this party are attempting to establish effective control over all forms of transport and at the same time to infiltrate into essential industries. It is apparent that any preponderant influence able to affect, and especially to hamper the war effort will require careful watching.

[Omitted: Para 6&7 on Police, Para 8&9 on Political affairs -- Ed.]

Yours Sincerely

J.A. Herbest

1 Not printed.

59: The Viceroy to the Governor of Bengal

Linlithgow Collection
[NAL – Acc. No. 2336]

To H.E. Sir John Herbert, G.C.I.E., Governor of Bengal

*The Viceroy's House New Delhi
July 17th 1943*

My dear Herbert,

Many thanks for your letter of the 7th July¹ and for the Fortnightly Report for the second half of June. I am so glad that you have found Stampes useful. He is full of ideas, and his energy and drive are really remarkable. I think that his visit out here, short as it may be will be of the greatest possible assistance to us, and I have had very warm commendation of the advice he has been able to give from other Governors.

2. I am rather disturbed at the statement in paragraph 5 of your letter about the Communist Party, for the statement you make there is a very grave one, and in very general terms. I should be grateful if you could give me chapter and verse to enable me should that be necessary, to look little more closely into the position disclosed.

3. I have let the Commander-in-Chief know what you say in paragraphs 6 and 7² of your letter and I have no doubt that he will give full weight to what you say in paragraph 7 [about military policy – Ed.]

[Omitted: Para 4 on political affairs – Ed.]

1 Doc. 58.

2 Not printed.

60: Political circular issued by CPI

Govt. of Bengal (Home) File No. SR/506/43
[Bengal State Archives]

Provincial. Headquarters.
Bengal Committee.
Communist Party of India.
249 Bowbazar Street, Calcutta.

26th July 1943

Political Circular No. 121/43 from Centre

On 9th August

Dear Comrade,

It appears that comrades in the provinces are drifting about 9th August. Please read P.W. No. 3 Joshi's splash article, and P.W. No. 5 another splash in P.W. No. 5 to wake yourself up with a jolt.

Party ranks are yet complacent refusing to think ahead, the F.C.¹ is not really in their heads, contacts with Congress patriots are non-existent or was and living a sectarian life inside their party shell, not cell, they aren't reacting to a very decisive date.

This very complacency will turn overnight into panic when 9th August comes and IF the FC is able to get going. We will be caught napping as on 9th August last, that time it was by the imperialist bureaucracy this time it will be by the F.C. The F.C. which we say stands isolated from the patriots would have reforged its links with them just because we were sleeping and not doing our job WARNING the patriots against F.C. plans and ACTING to foil them

What to — Expect?

That political guess we can make (no reports from the P.C's have reached us) is as follows:

We should not expect much *gadbad* except where we are weak as in U.P. Bihar, Bombay, Delhi.

We should expect the most *gadbad* where the F.C. is strongest and in those sections of the people with which we are the most isolated e.g. in non working class area as in Bombay

We should expect a big battle on the students' front.

We should expect F.C. to exploit economic issues in all working class areas but not in a very aggressive manner because of us.

In short ourselves and not the F.C. should win if we wake up now and begin doing our jobs.

If Gandhiji Fast

The situation will become far more complicated if Gandhiji begins the fast. All the danger spots that have been outlined above will become critical points. Do not lull ourselves by thinking just nothing much happened during Gandhi fast. At that time people were expecting his release because of his fast. Disillusionment and bitterness came — the patriots found that the bureaucracy was prepared to risk the Mahatma's life rather than release him.

The memory of 9th August will be activated by Gandhiji's fast and the F.C. will find it much easier to lead the patriotic masses. Please remember that last time the F.C. opposed 'Release Gandhiji' slogan and this time it is itself putting forward banking on the fact that the bureaucracy will not release him and if they can stage another 9th August on the slogan of 'Release Gandhiji' they are at once ensuring that Gandhiji will not be released and getting the patriots behind them.

What chances are there of Gandhiji fasting? The news that we gave in the notes (P.W. No. 4) is from a fairly reliable journalist. But today's papers contain a report from the '*Independent India*' that Gandhiji had not offered to withdraw 9th August resolution directly but only offered his services to the viceroy for the food problem and that the Viceroy has refused it. It should be noted that perhaps the '*Independent India*' was the first paper to give the report about the withdrawal of 8th August resolution.

Logically speaking there is no way out for Gandhiji within the framework of his own outlook either to withdraw the resolution or go on fasting. The only other alternative is for the people to get him released by breaking the deadlock through Congress League unity.

What the Party ranks should do is not to speculate about it but be prepared for the worst. Idle speculation is a vice as drift would be a crime.

Situation in a Nutshell

Get the F.C. plan and its implications clear from the P.W.

The situation in a nutshell is:

1. It is a desperate effort of the F.C. to overcome its isolation and reforge its links with the Congress patriots.
2. The F.C. is on the defensive, instead of sneering at Satyagraha, it calls for satyagraha instead of sabotage, instead of revolution and violence it talks of peaceful demonstrators and strikes. It is unable to appeal on its own slogans, it has to adopt the traditional Congress slogans to get the show going.
3. The Congress patriots are fed up with sabotage and do not want to break the peace themselves but they want to do 'something' to get Gandhiji's release and register their protest against 9th August.

Their anti-sabotage mood is our capital, while their 'wanting to do something' mood is the opening for the F.C. Who wins over the Congress patriots-this is the decisive issue.

Our successful approach should be satyagraha in the present conditions, especially on 9th August will lead straight to violence and sabotage. We must appeal to the Congress patriot that he is NOT the only actor and certainly not on top of reality if he participates in the F.C. 'satyagraha' the police will come in and do its worst and the F.C. will try to run away with the angry masses as it did on 9th August last.

1. It is a race against time and the decisive voice lies with the Congress patriot but what that voice will be also depends upon what we do from now on up to 9th August.
5. If the F.C. succeeds the whole cycle of last year starts again, repression sabotage, disruption, demoralisation. Try to think what it means in a worse economic situation with food and production crisis grown acute, they were just not there in the present form last year. From this it is not difficult to see that if the F.C. is able to get a decent dress-rehearsal. Jap invasion will follow. Bose is waiting at Singapore.

If we succeed we give a smashing blow to F.C. not let it get at the patriots and gain time

for our fellow-patriots and the people to pursue the positive path of breaking the deadlock, Congressmen get time to think more and more and make up their minds, we get the time to go ahead with our mass campaigns getting more and more patriotic support. In other words, Indian patriots get the chance to make the turn and this year's events will be what they make them.

If the F.C. succeeds the police now and the Japs next make history. If we succeed our people write history during the rest of the year.

Hold General Body Meetings

The first task to do is to hold general body meetings of Party members and sympathisers all over the country and in every locality. The most clear-headed Party leader must address the meetings on the basis of P.W. No. 3 and this Circular and answer all question and doubts and explain the programme of work outlined here.

He must tackle that left-nationalist deviation that is likely to arise on this issue. How will it? 'Something must be done' demand will appear dressed up in Party jargon. 'Keep the peace' is a negative slogan; what is the positive lead for 9th August? The reporter must treat the problem whether the question is asked by any Party member or not. Only after this confusion is removed left-nationalist muck is cleared that the comrades will get the Party lead clear and get *Conviction*.

They must be told bluntly that keeping the peace itself is a positive act in the circumstances. How? Last August it was imperialism's offensive. This August it is the F.C. that is taking the offensive. If we can just get the people to sit tight and not follow the FC, we inflict a decisive defeat on the FC, show it up and get the chance to mount our gathering counter-offensive that we are working up through various national unity campaigns Party drives. The F.C. can offer tricks and short cuts. Marxism gives no other solution except how to foil the game of the enemies of the people, serve their interests and move them. Our central task on 9th August is not to let the people move behind 9th August. We don't prevent it by ourselves taking over the FC instead.

Move Congressmen

Immediate steps must be taken to hold Congressmen's closed door meetings and put our understanding of the situation, estimate of the FC plan and appeal to them straight. Unmask in a very persuasive manner the satyagrahi garb of the FC. Appeal to them that it depends upon them whether this 9th August will be a repetition of last 9th August or become the beginning of a new chapter.

Use Gandhiji's letters to convince them and sharpen their differences with the FC. Expose the policy and practice of FC as being anti-Congress. Explain that if they get taken in by this satyagrahi trap they are repeating last 9th August once again to the greater detriment of the Congress and keeping Gandhiji in jail and inviting Bose to come in.

Get statements from them against sabotage and for perfect peace on 9th August. Distribute it as a handbill. Publish it in local papers and send us copies with a note on who is who and their importance. A positive statement is the least you should aim at, if you can get them to expose the FC plan for 9th August with an appeal to people not to participate in it, it will be a great victory.

Wherever possible, hold mass meetings on 8th August (Sunday) and warn the people against F.C. provocation and appeal to them to keep off all *gadbad*. Recall the memory of

last year and who is on top because of last 9th August – the police. Sketch the intensity of the crisis, food, cloth, the bureaucracy refusing to release Gandhiji. Meaning of Bose having come to from Berlin and forming his 'Independence Army'. To stage anything on 9th August is to help the Japs led by Bose invade India. To keep the peace is to get the chance to make the struggle turn to take our destiny in our own hands by uniting brother with brother. Explain how Gandhiji can be released and expose that the FC plan keeps Gandhiji in jail.

Put up a small positive resolution demanding Gandhiji's release to end the deadlock, forge Congress-League unity for National Government and to rally Congressmen to help the people to get food. In the same resolution, warn the people to keep the peace on 9th August and not follow the FC plan.

Among the Workers

Pay immediate attention to the working-class front. Take the issue boldly to the working-class. Rouse the workers' pride in his achievements and indignation against the F.C. Glorify workers not getting provoked last 9th August, holding on to production throughout the year meant saving India from Jap invasion, meant marching in step with the Red Army, meant giving the chance and time to the rest of the people to unite to solve the crisis. This year the working class must give a positive rebuff to the FC, hound every strike-agitator out of the working-class areas, point him as the agent of Japan to the rest of the workers.

The FC is seriously trying to exploit the production crisis and working-class grievances. Read P.W. re: Bombay electricity and explain it to the workers. In U.P. Bihar and Bengal it is likely to take up the issues that arise out of the coal crisis. It is likely to work up for the strike through the economic end. Begin a campaign against any strike on any pretext on 9th August. Expose the whole FC plan in general and his trick to get the workers. Take past of the local FC gang and explain.

They want to blow up production because they are Jap agents.

Warn the workers that the owners will try a lock out through jobbers and clerks like last year and they must NOW make the *bandobust* to beware of them and foil their game and go to work boldly and proudly on 9th August.

Working-class meetings must be held everywhere on first and eight of (Sundays) August against any strike on 9th August. These meeting must be preceded by intense explanatory educational campaign through group meetings.

Where meetings are not allowed, approach D.M. for special permission and tell him of the dangerous situation you want to control. If he is against Gandhi release resolution, accept it with protest but do answer the workers' honest doubt: if he does not go on strike on 9th August how he is protesting against last 9th August repression and helping to get Gandhiji out?

Among the Students

It will be toughest battle on the students front. The mass of students are demoralised but they are most in 'Something-must-be-done' mood. They are definitely against sabotage, they are against the 3 days strike, they see how it will lead to old indefinite strike which led to all they suffered, fines, victimisation, demoralisation, disruptions. They are for a one day peaceful strike. They don't see the F.C. as a F.C. but as misguided patriots or at worst, mere gangsters. They are so naive as to say last year we broke the peace, if we keep the peace this year. How will the F.C. run away with the strike? They forget the police, they expect the F.C. gang to

keep its promise and not provoke clashes. They have changed, they think the F.C. has also changed. This is so because they are unaware of F.C. danger.

The general explanation and slogans have to be put to them in terms of their own last year's experience and level of consciousness.

Concentrate on convincing them that 'one day's peaceful strike' is an illusion. They have forgotten the police and the F.C. They may want peace but the police and the F.C. don't.

The students are dead-set against the police. Explain that peace and no strike is the best way to baffle the police and defeat it.

Explain clearly and in a living manner how one-day peaceful protest strike slogan will restart last year's cycle, lathi charges, and arrests, followed by victimisation and explosions leading to greater demoralisation and disruption.

Boldly and vigorously expose the F.C. slogans and the meaning of Bose having come to Singapore from Berlin.

Convince them peace and no strike is patriotism and wisdom while one-day peaceful strike is to act the political baby and plan into the arms of the police and the F.C. both.

Launch an immediate explanatory campaign among the students for 'perfect peace, no strike on 9th August.' Speak inspiringly carrying home the gravity of the situation, responsibility of students and rousing the students to see that by not going on strike, they are doing a patriotic duty, saving themselves to build their own unity and organisation, helping the nation to make the turn, leaving the F.C. high and dry, keeping off Jap invasion.

Where strikes break out, despite us, and a strong minority is with us we should *not* join the strike but *boldly* go the college or school as a mark of patriotic duty and explain our act. Last year even when in a minority we joined the strikes because the patriotic elements were mixed with the F.C.

Police had begun the trouble, this year the F.C. is taking the offensive for the mass of patriotic masses are *not* behind the F.C., Jap danger is greater, national crisis deeper. We think it our duty to warn our fellow-students against the dire implications of FC plan and ourselves mean to fulfill our patriotic duty as we understand it. If this is done no Congress boy will consider our boys strike-breakers but sit up and think harder. If we follow tailist policy we act the Nehruite.

Where we are a hopeless minority and mass of patriotic students go on strike we should be in the midst of strikers helping to keep the peace, getting the boys home, keeping the police off and not letting the F.C. provoke clashes.

Party leaders must immediately hold students' General body meetings and explain these slogans to them clearly, on basis of the situation as it stands in their own locality and ask them to go out to rally student support behind themselves by holding group meetings and mass meetings on 1st and 8th, mercilessly expose the F.C. plan. Bring out leaflets, reprint Joshi's two articles for mass distribution.

It should be an easy victory all over Bengal, Andhra and Malabar hard battle everywhere else. Today Mohan² addressed a meeting of 130 boys of the Bombay Students' Union, our patriotic periphery, majority from struggle strongholds, our explanation and slogans went down, non-Party boys asked questions and were satisfied. Joshi had given the above slogans to Party boys and girls only two days back in an informal chat.

If the local Party leaders held the Party students not to remain on the defensive but put these slogans across with a bang as a political offensive against the F.C. and for fraternal unity with the Congress students by unlinking him from the F.C. and to get linked up with him

they will win. Our students must be taught to talk to the Nehruite boys, teach them to listen to all what honest non-Party boys and girls say and give our boys patriotic arguments how to convince them.

Slogans for 9th August

- To keep the peace is highest patriotism,
- .. Provocation is F.C. game to lead the people to the police and give Bose the signal.
- Another 9th August will mean more repression, more demoralisation more disruption, deadlock continued.
- .. This when Bose is at Singapore.
- .. This when Congressmen are thinking anew.
- .. This when sabotage is not popular.
- .. F.C. talks of peaceful strikes and satyagraha.
- .. To reforge its links with Congress masses.
- .. To get the chance to get at the people and lead them from satyagraha to sabotage and aid Jap invasion.
- To remain peaceful is to save the country. To go for strike is to invite Japan.

Send Reports

Every Party local must send detailed reports of what happens in its locality directly to the P.W. Don't only say what you said and did but also what the F.C. did and how the patriotic masses reacted. This report must be drafted on 10th and despatched on 11th WITHOUT DELAY.

Lal Salams

For the Polit-Bureau.

On the Slogan: 'No Strike on any Account!'

P.L. No. 12 of July 4th has led to some confusion on the question of strikes because at one place it used unclear and ambiguous phraseology. In the questionnaire for Party Reporting in referring to strikes it asks: 'How far have you been guilty of Royist (no strike on any account) deviation?'

This makes it appear as if the 'no strike' slogan is a Royist slogan; and that strikes may be justified on some occasion.

Our Punjab comrades have correctly objected to this, noting that we ourselves are opposed to strikes because they disrupt national production.

What then is the distinction between ours and the Royist policy? Ours is *Not Merely an Anti-strike Policy* as the Royist policy is: For us, opposition to strikes is part of the battle for production which the workers must lead to strengthen national defence and secure their own demands. Production is for us the main lever to unite the workers. The main basis of our policy is initiative in the organisation of production. Opposition to strikes come as part of this big problem of organising national production. Similarly on the political front our policy is *Not Merely* to keep the peace and avoid disruptive struggle, but also positively to unite for defence.

The Royist slogan is 'support Government on the political front, support its disruptive policy on the production front, and leave the initiative to the bureaucracy'.

Their no-strikes slogan is one of acquiescence in the bureaucratic management and disruption of the production front; it really disrupts the ranks of workers and delivers them bound hand and foot to capitalist and the bureaucracy because it refuses to unite the workers on the only basis on which their unity can be built-production. It therefore sacrifices the immediate demands of the workers and fights against the seizure of political initiative by them through the production end.

The Royist deviation on the question of strikes is: disruptive anti-strike propaganda divorced from the main task of uniting and mobilising the workers for production; anti-strike propaganda in the service of the bureaucracy, not to strengthen national defence.

Unfortunately, the party Letter writes as if opposition to strike itself is Royism and that is wrong.

Opposition to strikes *without positive production policy* is Royism. The correct formulation of this particular question, therefore is:

'How far have we been guilty of Royist deviation: pure anti-strike policy without positive mobilisation for production?'

Reprinted by the Bengal Committee of the Communist Party of India.

Special Note

To All D.C.'s.

31.7.4.

This circular gives you in details what you must do to forestall F.C. provocation 9th August. One thing you must remember. F.C.'s base in Bengal is mainly amongst the students. It is in the student front where greater flare-up may take place. So you must give all attention to the student front. Immediately explain the whole thing to the student comrades and throw them into day and night work inside as well as outside the institutions. Student DCR and DCO's must check up the work of the student comrades every day, give them proper tips and enthuse them politically.

P.C

1 F.C. - Fifth Column

2 Mohan Kumara Mangalam.

61: CPI Propaganda

Govt. of Bengal (Home) File No. SR/506/43
[Bengal State Archives]

Splash For P.W. 5.
On 9 August.

Perfect Peace

9 August is coming again. Memory inevitably goes back to 9 August last year. Blood rushes to the head when one recalls the police repression that was let loose on that day and went

on during the year. Shame overcomes one when one remembers that from that day Fifth Column spoke and acted in the name of the Congress.

How did it all happen?

The Congress leadership demanded National Government for National Defence.

The Government removed the national leaders and banned the Congress. It was a vicious effort to suppress the national movement to escape the demand of the National Government and retain India as an imperialist colony.

The Fifth Column entered the scene. The Forward Blocist in some places, the Congress Socialist Party (C.S.P.) in most places began speaking in the name of the Congress. They went so far that handful of Congress Socialist leaders had the cheek to start issuing instruction in the name of the A.I.C.C.; They could do it with impunity because all the Congressmen leaders were in jail. They could not be checked by the few Congressmen left out because they were safely underground. They managed to get support because they spoke in the name of the mighty Congress. They could mobilise the patriotic masses because they were bursting with indignation at the arrest of the national leaders. The exploited mass indignation to organise nation-wide sabotage movement, i.e. to destroy the very defence of the country, to organise which the Congress had demanded National Government. Why did they do it? Disillusioned with the British they looked to the Japs as the liberators. They were fighting the British to welcome the Japs! This was obviously not the way of patriots but of traitors.

Within the Year

Quite a lot has happened within the year

Gandhiji's letters have cleared the air by repudiating both the policy and practices of these Fifth Column traitors who had been speaking for the Congress. He stated that the defence of India was the ardent desire of the Congress that the Congress wanted settlement and not struggle and had nothing to do with what happened on and after 9 August.

The Congress masses as well learnt through their own experience and became fed up with the sabotage campaign when they saw that it led nowhere except hurting our own people and destroying the defence of our own country and a tighter grip of the bureaucracy over the nation.

But Gandhiji remains in jail and the situation continues to deteriorate. Intense thinking is going on among Congressmen, different suggestions are being discussed along the lines that something must be done. There is however no unanimity as yet on what that something must be but all genuine Congressmen are agreed that it should not be sabotage.

The Fifth Column finds itself isolated from patriotic opinion and is struggling hard to overcome it.

Plan for 9 August

It is finding a golden opportunity in the approach of second 9 August. *Celebrate 9 August* — is its slogan. In the People's War of 18 July we exposed their Plan.

March to Poona

- Strikes
- Hartal
- Lathas to start demonstrations everywhere.

They have cunningly chosen 9 August to exploit the green memory of the people about police lathis firings etc.

They utter not a word about sabotage and only put forward Satyagrahi form to humbug the Congressmen once again and exploit his 'something must be done' mood.

They know from last year's experience that hitching the wagon from Satyagraha to sabotage is easy enough. They know they cannot get the people on their own, therefore they are wooing the Congress minded masses with slogans and forms which are typically Congress. They know if they can once get the people on the streets with the co-operation of Congressmen, the police will oblige them as it did last year and the rest will follow. It needs no intelligence to foresee that the police is lying in wait for this 9 August too.

Let the patriots not hug the illusion that the handful of Fifth Columnists will not be able to run away with the masses and that they will be able to keep that strikes or demonstrations peaceful and so on. To celebrate 9 August is to hand over the initiative to the police on the one hand and the Fifth Column on the other. It is inviting a police attack on weakened and disorganised national forces and giving the second chance to the Fifth Column to lead the angry masses from Satyagraha to violence within the course of the same day. This is what will happen on this 9 August if any section of patriots follows the Fifth Column lead.

Choice before Congressmen

The decisive voice lies with the Congress patriots. The trap has been set for them in particular by the wily Fifth Column.

If they do not join up, nothing will happen. The Fifth Column already isolated will get utterly demoralised and will never dare again appeal to Congressmen who are honest patriots. On its own the Fifth Column cannot even put a few hundreds on the streets anywhere in India.

If they join up we will witness a worse repetition of last 9 August; more ruthless repression because the police thinks it has come out as the victor and the Congress has been smashed, more demoralisation because the people will feel the Congress has lost another round, more pro-Jap felling in Congress ranks who will say: the British are really brutal let the Japs come and knock them out we can't. The Fifth Column will get another lease of life.

Bose is Looking Out. — [Omitted — this may be seen in Chapter XVI — Doc. 17 — Ed.]

Congressmen must recall Gandhiji's letters and decide whether the C.S.P. gang that has been issuing instructions in the name of the A.I.C.C. has been carrying out the correct Congress policy; then they will find it no strain on their loyalty in not joining in the programme given by 'Congress Bulletins' for 9 August.

No Political Scruples

In orthodox Congress provinces as in Bombay they talk of Satyagraha and pledge themselves not to go in for sabotage.

In Bhagat Singh's Punjab their call is:

If you have any self-respect and love for your Country — Shoot every John Bull before 9 August. Britishers; Quit India.

The English are not prepared to part with power. Murder every Englishman before the 8th August.

Our Countrymen are dying of starvation, if you want food for yourself shoot the Englishman before 8th August. Long Live the Revolution.

These hand bills were pasted up round about 12 July, all over Lahore.

Any damned approach to get honest patriots do their job for them; In no country of the

world has the Fifth Column been able to succeed in its own. And the Fifth Column has no political scruples, its only job is to create disruption and anarchy in the rear and create a favourable situation for the invasion army of the Fascists.

Playing With Students. — [Omitted — 3 paragraphs which may be seen in Chapter XI — Doc. 12 — Ed.]

Getting at the Workers

The Fifth Column is desperately trying to get the working class on strike. They have learnt by now that a straight political appeal against the policy of the Communist Party or slandering its leaders does not get the workers on strike. They are therefore taking up economic grievances. It is scarcity of electricity for the mills in Bombay, it is coal in the Northern and Eastern provinces and food and mangai everywhere. The pro-struggle owners who want less production for more profits are prepared to oblige the Fifth Column through lock-outs, close the mills and keep the workers out on 9 August. The Fifth Column is organising goonda gangs to attack patriotic workers to prevent them from going to work and organise clashes. When the working-class led by its Communist leadership did not lose its head on last 9 August it is not going to do so this time. We won't let the Fifth Column monkey with production but squeeze the life out of it if it dare enter any working class area.

Make up Your Mind

9 August is a decisive day.

If any section of Indian patriots instead of opposing helps the Fifth Column programme for 9 August and moves the people behind it they will be re-enacting the tragedy — last year in a worse form, blood bath at the hands of the police now — and the Jap invasion *as soon as the monsoon lifts*.

If the mass of patriots see through the foul game of the Fifth Column and fulfil their duty to warn the people betimes to keep off its 9 August programme, they will keep the Fifth Column in its place, leave Bose guessing and make Tojo think whether it is worthwhile invading India and begin to doubt if Bose can rally the Indian people.

To keep perfect peace on 9 August is the job before all patriots so that all together may coolly think how to end the dead-lock, get Gandhiji out, build Congress-League unity, win National Government to face Tojo-Bose when they come. All this is possible.

Congressmen are looking towards the League to demand the release of the leaders.

Leaguers are looking to Congressmen to accept the right of self-determination.

The hungry are looking to all patriots to get them food.

The awakened kisans are determined to grow more food and look to the rest of the people to help them.

The patriotic worker is sticking to production and struggling hard to increase it to supply people's needs. He looks to the rest of the people to help him get *mangai* and cheaper food.

All this is the beginning of a new patriotic upsurge based on selfless service of the people calling for fraternal unity. Here is the true stream of Indian patriotism. More and more thinking has to be done by the patriots and every honest patriot will find himself in it.

Keep the peace on 9 August and win the chance to make the turn.

There is no time to lose. Last 9 August Bose was in Berlin. This 9 August he is much nearer at Singapore. The traitor Bose will never touch the golden soil of Bengal, if we make up our mind over this 9 August.

62: Question in the Council of States about Kayyur brothers

File No. 8/13/43 - Home Poll (I)
[NAI]

Question (No. 38 on 3, 8, 43) in the Council of State by the Hon'ble Raja Juweraj Dutta Singh regarding the execution of four Kayyur Peasants sentenced to death for the murder of a police constable in South Kanara District.

Council of State

(To be answered on the 3rd August 1943)

Reply to the Ho'ble Raja Juweraj Dutta Singh's question No. 38.

The Hon'ble Mr E. Conran-Smith

In certain villages of Kasargod Taluk of the South Kanara District peasant organisations had been established under the name 'Kashaka Sangams'. The ostensible object of these organisations was protection of the agriculturist tenants against alleged oppression of landlords and village police and excise officials. Each union had a body of volunteers who wore uniform and carried lathis. Dt. about 1 p.m. on the 28th March 1941 there was a rally of volunteers at a village near Kayyur. On the same day a constable named Subraya had gone to Kayyur to execute two warrants of arrest. While he was sitting inside a shop at Kayyur, he was noticed by a large group of volunteers of the Karshaka Sangam which was marching in that direction. They immediately surrounded the police constable, and under threat of death forced him to carry the flag of the sangam. After going some distance he threw down the flag and tried to escape by running away. He was chased and caught, whereupon some of the volunteers beat him with lathi until he fell down. He was then thrown into the nearby river, but while he tried to escape by swimming away, he was stoned until he sank in the river and died.

In connection with this crime 60 persons were prosecuted; of these the sessions judge convicted 22 persons, out of whom 4 viz., Madathil Appu, Padavara Kunhambu Nair, Chirukandan and Avokara were sentenced to death. In the course of his judgement the sessions Judge remarked that 'It was a savage murder and carried out with deliberate and persistent brutality' and that there were no extenuating circumstances. This judgement was pronounced on 9th of February 1942. The convictions and sentences were reviewed by the two judges of the High Court of Judicature at Madras, who at the same time heard appeals from the various convicted accused. The Judges of the High Court upheld the convictions and confirmed the four sentences of death. In doing so they remarked that 'the death of this unfortunate constable was shown to have been brought about under singularly atrocious circumstances' A petition for mercy on behalf of the four condemned men was made to His Excellency the Governor General and was rejected. Thereafter the accused applied to the Privy council for Special leave to appeal, but this application was also rejected. The execution was therefore carried out on the 29th March 1943.



63: Governor of Bengal to the Viceroy

Linlithgow Collection
[NAI - Acc. No. 2336]

From H.E. Sir John Herbert, G.C.I.E., Governor of Bengal.

Govt. House Calcutta
August 25th, 1943

Dear Linlithgow

This is in reply to your request in paragraph 2 of your letter of the 17 July¹ last for more detailed information regarding my report of the infiltration of the C.P.I. into transport and other essential service. It has taken some time to get together the information you require which is comprised in a report supplied by the Commissioner of Police, Calcutta of which I enclose two copies.

2. The Commissioner's reading of the situation on the basis of what he knows is that the C.P.I. are in Calcutta at any rate, making a dead set at the transport and essential services with a view to securing a position in which they will be able to dictate to whatever Government is in power by holding over it the threat of paralysing those service. They prefer a process of peaceful, and therefore legitimate, penetration because unlawful methods such as sabotage might lead to the detention or prosecution of their leaders with a corresponding setback to their activities. Fairweather opines that, unlike Congress, they do not think that it will be necessary to *drive out* the British after the war and they are probably prepared to wait till then to make their coup² Their view is that after the war the British will be prepared to walk out and then, with the British element in the administration reduced and weakened, they will be able peacefully to walk in.

3. I do not necessarily accept this point of view but it is at least tenable on the facts. Fairweather has supplemented his report with the statement that the C.P.I. have penetrated the A.R.P. Services in Calcutta and are ubiquitous in Food Control disposition. Further they appear to have a highly efficient underground organisation, as the party undoubtedly are in possession of very considerable funds far above what can be accounted for from any obvious source. Given these facts, I think you will agree that any organisation with such potentialities for disturbing our essential services would be if it so desired in a position seriously to affect our war effort. I do not say that that is their object; but I do repeat my opinion that the situation requires careful watching.

Yours sincerely

J.A. Herbert

[Enclosure]

Note on C.P.I. Infiltration into Public Utility Services and Essential Industries

Since the lifting of the ban on the C.P.I. in July 1942 the Party has, in this short time made

progress which is astonishing when compared with the amount of progress made by any other political party at any time. The Party organisation is good and the workers are sincere in their beliefs and are active.

This note deals not with its power as a political body or with its political objects but merely with the influence the Party has acquired over the Trade Unions. It is this influence which they intend to use at a not very distant date to secure political power.

In order to exercise centralised control over the Trade Unions movement the Party formed a body called the 'Bengal Provincial Trade Union Fraction' with Abdul Momin, Security Prisoner as its Secretary.

The Party has also formed a 'Committee of Essential Services Workers' with its office at 249, Bowbazar Street. This Committee is formed of two representatives each of the following Unions:

The Calcutta Tramway Workers' Union.

The Calcutta Corporation Workers' Union.

The Calcutta Electric Supply Corporation Majdur Union.

The Port Trust Employees Association.

The Oriental Gas Workers' Union.

There are also several prominent Communists on the Committee for example, Bankim Mukherji, M.L.A., Joyti Bose, Bar at Law, Mohammad Ismail, Sudhin Pramanik General Secretary of the Bengal Provincial Trade Union Congress and Radheshyam Banerji, Secretary of the Port Trust Employees Association. The object of the formation of this Committee was to formulate uniform and combined demands for the workers all Essential Services. At a conference attended by some 200 of the members of these Unions held in September 1942 in Calcutta, it was stated that their object was to strengthen the Unions of the Essential Services in order to realise their demands. The Committee is still functioning.

The C.P.I. influence in public utility concerns.

I. Transport

(a) *Tramways* – The C.P.I. has obtained complete control over the tramway Workers Union including the drivers, conductors, menials of the Permanent Way Department, workers in the Engineering Shops and in the Sectional Depots. The Calcutta Tramway Workers Union is controlled by the C.P.I. and has its headquarters at 249, Bowbazar Street. Its membership is now 3,973 which includes 1,828 old members and 2,145 members enrolled during 1942-43. Almost all employees of the Company are now members of the Union. Rs 4161 was subscribed to the Union fund during the year. Dhiren Majumdar, a conductor, has been elected the General Secretary.

(b) *Bus Services* – The C.P.I. had formerly no influence among the Bus drivers and conductors, but in June last when there was some discontent among the Bus drivers and conductors the C.P.I. took the opportunity of extending their influence to this transport service. At a meeting held on 24th June 1943 the Bus Workers Union was formed with Mohammad Ismail as the Secretary and with other Communists on the Executive Committee. By the 20th July, 1943 when an application for registration of the Union was submitted, 650 members had been enrolled.

(c) *Railways* – There are several rival Unions among the workers of the Bengal and Assam Railway. The Communists control the Bengal and Assam Railway Workers Union with its

office at 249, Bowbazar Street. Its membership is only 500 and its activities are confined for the most part to the workers in the Calcutta Railway wards. In September 1942 a 'Provincial Railway Fraction of the C.P.I. was formed at 249, Bowbazar Street with Jyoti Bose, Bar at law as the Secretary. C.P.I. policy. However as far as the Railways are concerned is dictated from the C.P.I. headquarters at Bombay. The Provincial Railway fraction is co-operating with the All India Railwaymen's Federation which is guided by Mr Jamnadas Mehta M.L.A. (Central)'

In November 1942 D.S. Vaidya of the Bombay Committee of the C.P.I. wrote to Muzaffar Ahmed of the Bengal Committee suggesting that in view of the food shortage and inadequate pay and allowances of railwaymen, they should whip a countrywide campaign among the workers. If the railway workers were organised they would obtain their demands from Government. An organisational drive he said should therefore be made on all Railways as there might otherwise be a 'very serious flare-up spontaneously at various points on different railways'. In February 1943 Jyoti Bose of the Bengal Provincial railways Fraction wrote to D.S. Vaidya of Bombay asking for a clarification of the Communist position with regard to the withholding of further grants of dearness allowance to workers who were forced to join the Railway military unit in Kharagpur.

(d) *Water transport in the Port* — The C.P.I. has no organisation of its own. They are merely co-operating with the Port Trust Employees Association which is a Red Union controlled by the Workers league organised by ex. detenu Nepal Bhattacharji (externed). A section of the Communists is working among the Port Commissioners employees in the Kidderpore Dock area.

(e) *Shipping* — The C.P.I. has no influence among the seamen or among the Docks and Jetty labour.

II. Public Utility Services

(a) *Calcutta Electric Supply Corporation Ltd* — The C.P.I. had formerly no influence among the Calcutta Electric Supply workers. These workers used to belong to the Calcutta Electric Supply Workers Union which was controlled by the Bengal Labour Association run by Dr Suresh Chandra Banerji (Security Prisoner). Dr Suresh Chandra Banerji has been made a Security Prisoner and the leading members of the Calcutta Electric Supply Workers Union who were trying to bring about a failure of the electric supply were externed. The Communists have since formed the Calcutta Electric Supply Corporation Majdur Union with its head office at 249 Bowbazar Street and with two branches one at Cossipore in Calcutta and the other at Bhatpara in the 24-Parganas District. Its present membership is 764 which is only a small proportion of the workers employed by the Company. They are however, carrying on active propaganda among the workers' and have formed a strong executive Committee with Bankim Mukherji M.L.A., as President and with 'worker' representatives drawn chiefly from the main Power Stations. They are competing with the Bijli Majdur Union which is affiliated to the Bengal National Chamber of Labour and with the Calcutta Electric Supply Workers' Union.

(b) *Oriental Gas Company, Ltd* — The Oriental Gas Workers' Union, whose office is at 55/b, Sasthitala Road, Narculdanga, used to be under the control of the Bengal Labour Association of Dr Suresh Chandra Banerji. The Communists however, have succeeded in ousting Dr Suresh Banerji's men and have captured the Union. Its membership at present is only 230, the total number of operatives in the gas Works being about 1,200. The members, however, are active.

(c) *Corporation of Calcutta* — The Communists control only one of many Trade Unions

among the Corporation workers; this is the Calcutta Corporation Workers' Union with its office at 249, Bowbazar Street. They have acquired control over a section of the operatives of the Corporation Entally Workshop, of the Conservancy Department and of the workers of the Palta and Tallah Pumping Stations. Its membership is only 950 whereas there are some 20,000 workers in the Corporation. The C.P.I. is making very little progress here as they are up against the Calcutta Corporation Employees' Association of which the President is Ziauddin Ahmed, a Councillor of the Corporation and a member of the Bengal National Chamber of Labour. The membership of this association is 9,469.

(d) *Calcutta Port Commissioners* – Workshops and Jetties. The C.P.I. has, up till now been able to gain no foothold here. A section of the Party is, however carrying on propaganda among the Port Commissioners' labourers with a view to preparing the ground for the foundation of a Union.

(e) *Bengal Telephone employees* – Dew Narain Sharma, formerly a member of the Bengal Labour Association, is now trying to form a Union among the workers of the Bengal Telephone service on behalf of the C.P.I. Last year Mohammad Ismail and Kripasindhu Khuntia of the C.P.I. tried to form a Union but met with no success.

III. Essential Industries

(a) *Jute* – The C.P.I. controls the Bengal Chatkal Majdur Union which has branches in Calcutta and in the surrounding industrial areas. The Union is active and claims to have recently collected some 35000 signatures of millhands which will be appended to a memorandum to be sent to Government and the Mill authorities demanding improvements in their conditions of service and the appointment of an enquiry committee, to investigate their conditions of work.

(b) *Engineering* – The C.P.I. controls the following Unions:

- (i) The Bhartia Iron and Steel Workers' Union. Membership 536 out of a total of 1,600 workers.
- (ii) Jay Engineering Workers' Union. 840 members.
- (iii) Victory Engineering Workers' Union.
- (iv) Martin Workers' Union.
- (v) Steel Products Workers' Union. In September 1942 the Communists formed this Union with 100 members. They have since gathered strength. The number of workers in the factory is 700.
- (vi) C.P.I. members are making propaganda among the workers of Jas. Alexander and the Metal Box Co. (India) Ltd. though they have as yet formed no Union.
- (vii) The C.P.I. tried to form a Union among the workers of Allenberry and Co. during strike but they have not as yet proved successful.

(c) *Miscellaneous* – The C.P.I. controls the P.W.D. Workers' Union, but this Union is inactive. The C.P.I. also controls the Brooke Bond Workers Union of which Gopen Chakrabarti of the Meerut case and Juran Ganguli (ex. detenué) are the President and Secretary respectively.

The above note shows the progress they have made merely in the local labour field. The report on the All-India Trades Union Conference held at Nagpur from 1st to 3rd May 1943 illustrates the progress they have made on an all-India scale. They are likely to make still further progress for their organisation is well-knit and their leaders are able sincere and practical. They let no opportunity go by of improving their organisation. Their volunteers, for instance,

help in controlling Food queues and they are sincere in their desire to smash Fascism and Imperialism.

J.V.B. Janvrin. 16.8.43.
Deputy Commissioner of Police
Special Branch, Calcutta.

Doc. 58.

64: Notes in the Office of the Secretary, National Defence Council

File No. 35/5/43 – Home Poll (I)
[NAI]

*Office of the Secretary,
National Defence Council.*

Notice of point received for consideration in the next session of the National Defence Council.

From – Professor E. Ahmad Shah

Date of the next session – 2nd, 3rd & 4th Sept. 1943.

Text of the point.

That a statement be made on the internal situation reviewing the events during the months of July and August particularly of the weeks beginning with the 9th of August.

In this connection the Council may be taken into confidence and be informed of any correspondence between the Government and Mr Gandhi. And if there was any correspondence will the Government inform us if there was any indication direct or indirect of withdrawal of the August resolution, 1942?

The P.S.V. may see and a copy of this note may be referred simultaneously to the Home Department for consideration. The reply may either be given orally in the council or in writing through this office. This office should be informed as soon as possible whether it is proposed to deal with this point orally in the Council or a written reply will be sent to this office for circulation to members. In case it is proposed to give a written reply it is desirable that some suitable representative of the Department should be present in the Council to deal with enquiries if any made in the matter on the written reply. If a written reply is to be given, it should reach this office by the 28th instant.

R.A. Gopalswami,
17.8.1943.

G.S.B.
17.8.43
K.C.

Home Department

I place below suggested insertions to meet the pencil comments made by H.M.

A. Details of incidents of sabotage etc.

- B. A report on the arrest of Forward Bloc leaders in Bombay
- C. A copy of the A.I.C.C. programme for August 9th from which H.M. may quote. I am endeavouring to get something representative for the C.S.P. programme from D.I.B. and if I succeed I will put this up separately.
- D. A copy of the detailed instructions for members of the Gandhi Yatra from which H.M. may quote.
- E. A reference to the work done by Communists etc. to prevent trouble on August 9th

I have indicated by the appropriate letters in the text¹ where these various insertions might be made; but I have made no attempt to connect the wording up into a consecutive whole as I understood that H.M. would himself wish to revise the final wording. I also place below extracts from Achyut Patwardhan's 'Ninth August' which might be quoted with advantage, though some caution would perhaps be needed since there is no proof that this really is the work of Achyut Patwardhan. I have not indicated the actual place in the text where this insertion might be made but it would perhaps come most suitably in the last paragraph in the warning against complacency though to include it will necessitate some rewording.

(S.J.L. Oliver)

29.8.43

Under Secretary

Add. Secy.

Owing to H.M.'s illness it has been decided that a brief written answer should be given to the first part of Professor Ahmad Shah's question. I have revised the draft accordingly and have asked U.S. to explain the revised arrangements to the Secretary N.D.C.

(R. Tottenham)

30.8.43

Addl. Secretary.

I have already explained the situation to Mr Gopalaswami by telephone. Issue the D.O. with a fair copy of the written reply to Professor.

Signed

E. Efforts of the Communists etc. to Prevent Trouble

I am glad to say that the Communists and the Royists conducted strenuous campaigns against any revival of sabotage and disorder on August 9th. In addition to stressing in 'People's War' and their other organs the need for avoiding any form of mass demonstrations to celebrate the anniversary the Communists issued numbers of leaflets and posters to this same effect. members of the Party held meetings for the same object. In the Coimbatore District of Madras a body of Communists turned out to help in guarding the railway line. It is probably in the field of labour however that their efforts were of most assistance. Thus in Bombay a resolution was passed at a Communists' meeting urging labour not to listen to fifth-column propaganda and to refrain from going on strike. In Calcutta where labour remained entirely unmoved by the anniversary both Communists and members of the Labour Party of India held meetings throughout the preceding week urging labour not to succumb to any incitement to create disturbances. In Bihar the Kisan Sabha Royists and the Communists did propaganda and

issued circulars warning the people not to be misled by extremists. In Nagpur Communists did useful work in preventing a threatened strike of textile workers.

F. Extracts from 'Ninth August' edited by Achyut Patwardhan

(i) Extract from editorial by Achyut Patwardhan:

On 9th August a year ago British Authority Struck a treacherous 'Peal Harbour' blow at the Congress hoping thereby to rob the Indian people of their leadership in the hour of action. For a whole year India has lived under a nightmare of terror which would put the worst Jap-Nazi atrocities to shame.

Robbed of their leaders the Indian people answered this challenge to the best of their lights. They acted with an unexpected heroism and shook the administration to its foundations. After a few months they were overpowered by a superior organisation of military force and mass resistance has today given place to the unflinching defiance of a few thousand men. But although the population know that for the time being our revolt has been suppressed, there is no desire to repent for our rebellion. Political India is proud of the new record of defiance and of the undreamt of vigour of our mass revolt.

A Year ago we were amazed by the undreamt of punch in the people's revolt. We regretted the lack of previous planning and organisation. Let us repair that gap and await our destiny, when once again this sea of humanity will rise in a storm.

Achyut Patwardhan.

(ii) Extract from 'Achyut Patwardhan's Greetings to Comrades released from Jails'.

After a year's separation, warm and sincere welcome back to you all in our midst . . . I am confident that after a reasonable amount of rest and recuperation you will once more join up the great effort which has become the central objective of our lives . . .

Let us renew our enthusiasm and let us create a new earnestness to complete our year old tasks bringing fresh hope to men who are sorely tried.

While we set ourselves to do our utmost to make our organisation a fitting instrument for the revolution, let us never forget that the final blow could be struck by the mass of our people . . .

1 Not printed

65: Official Notings on what Government's attitude should be towards Bolshevik Party – (dt 27.8.1943–15.10.1943) (extracts)

File No. 12/1/43 – Home Poll (I)

[NAI]

Home Department

... I put up a draft to N.W.F.P. which may issue with a copy of D.I.B's note at pages 3–5/notes. I am not clear whether it is the intention to address all provincial Governments on the subject of this party. In view of the very small representation in most provinces, it is, perhaps, doubtful whether this is necessary. A letter to Bengal, Assam, U.P. and Bihar might, perhaps, do some good, though there is no indication that any such reminder is necessary. If it is proposed to

address these Provinces, I would suggest that we should wait until the draft on Communist party has issued; our attitude in the two cases will be extremely similar and we could with advantage draw attention to the policy laid down in the Communist case.

(S.J.L. Olver)

27.8.3.

Under Secretary

D.S. (I).

PS. I suppose there is no doubt that Bolshevik Party of India is the same as Labour Party of India. If so that should be made clear in the draft. Some of the D.I.B's note to be enclosed refers to the former.

Tottenham

D.S.S. No. 18 (issue)

12/1/43

Home Department

Submitted with papers. (We have made inquiries from N.W.F.P., vide S.No. 18). The item was included in last week's sets of important cases disposed of by officers but the sets could not be submitted to H.M. as he was in hospital.

S.R.N.

9.9.43

. . . I put up a draft express letter¹ which I have addressed in the first instance to Bengal, Assam, Bihar and U.P. only. I do not think the Bolshevik alias Labour Party of India has any representation to speak of in any other Province. D.I.B. should, however, see the draft before issue, he may wish to bring the note to be enclosed with the draft up-to-date and he might also be asked to comment on the question whether the draft should go to all Provinces or be restricted as suggested.

24.9.43

(S.J.L. Olver)

Under Secretary.

D.S. (I)

Intelligence Bureau (H.D.)

A fresh note is enclosed, superseding the former one. In addition to the provinces addressed in the draft Express Letter, the party has branches in Orissa, the C.P. and, in embryo, in Bombay and Ahmedabad. Since the Party's leaders have shown considerable enterprise in attempting to set up branches all over India, it is quite possible that they may visit the remaining three provinces, Madras, Sind and the Punjab. It is suggested, therefore that the draft be given the same circulation as the policy letter on the Communist Party.

The enclosed note does not mention the action taken against Abdur Rehman Khan and Nripen Ghosh by the N.W.F.P. authorities (nor the externment of four other party members from Indore in July), since it seems possible that such action might not have been taken if the Administrations concerned had been apprised of the Government of India views on the subject.

As regards the draft itself, the last sentence of paragraph 2 will require amendment. Our

previous note was a little misleading about the date of the adoption of the pro-war policy. The exact date is not known and although the Party's present leaders may have been a little earlier off the mark than the C.P.I., they were not so successful in securing unanimity within the party and Mazumdar,² who held a two-war theory, was not expelled until May 1942. It will be better to state that they were as prompt as the Communists in switching from their former attitude.

(G.C. Ryan)
Assistant Director (R)
12.10.43

Home Department (Mr Olver)
D.I.B. u/o No. 43 III, dated 12 Oct. 1943.

The draft may issue to all Provincial Govts and Chief Commissioners, with the slight omissions suggested in view of para 2 of draft note & with the revised note and enclosure . . .

S.J.L. Olver
12.10.93

1 Not printed.

2 This refers to Niharendu Dutta Majumdar - Ed.

66: Tottenham to Laithwaite (on Janvrins' report)

File No. 7/23/43 - Home Poll (I)
[NAI]

D.O. No. 7/15/42 - Poll (I)
Home Department,
New Delhi.
The 4th September, 1943.

My dear Laithwaite,

Will you please refer to your endorsement No. F.132-GG/42, dated September 2nd, enclosing¹ a letter from the Governor, Bengal about Communist influence in transport and other essential services in that Province? The letter and Janvrin's report² enclosed therewith bring out some of the difficulties of the Communist problem, which are referred to and fully discussed in the long draft³ to Provincial Governments of this subject which was recently submitted to you by the Home Department. Everyone, I think, agrees that the Communist Party of India is out to secure a powerful position for itself, but opinion has always been divided on the questions.

- (a) How far it has already succeeded or will succeed in doing so, and
- (b) Whether the long term dangers inherent in its achievement on success in this effort are outweighed by the short term advantages derived from the fact that its immediate object is to support the war effort, and it is one of the very few parties that provide a makeweight to the defeatism of Congress.

Our own view, as you will see from the draft letter referred to above is that the Party has not yet succeeded in establishing a very strong position for itself and that the short term advantages outweigh the long term dangers. It may be agreed, as the Governor of Bengal puts it, that any organization with such potentialities for disturbing our essential services would be, if it so desired, in a position seriously to affect our war effort. On the other hand, there is nothing in Janvrin's report to suggest that the measure of control actually established by the Party in the various Services referred to has in fact produced any bad result at present. Indeed, it is possible that its influence has been used to prevent labour troubles and keep the services in question working efficiently. In other words, the establishment of Communist, as opposed to Congress, control may, for the moment, be actually beneficial.

2. Brayden, who as you know was C.I.O. in Bengal and is acting for Ahmed in the Intelligence Bureau, does not think that the position disclosed in Janvrin's report provides any grounds for alarm. He points out that, in the absence of the Congress and their sympathisers, the C.P.I. is practically without competition in the labour field in Bengal and has naturally used the opportunity to gain control of as large field as possible, but so far, after one year of intensive effort, it has only succeeded in gaining effective control of important Union, the Tramway workers' Union. They have made little headway on the railways in Bengal and their influence on the unions of other essential services in no way amounts to control.

3. I may add that we have no confirmation here of the view that the C.P.I. possesses a highly efficient underground organisation and very considerable funds. On the other hand, we know that, in many Provinces, the Party is definitely short of money. I am, however, asking the intelligence Bureau here to pursue this point.

Yours sincerely,

R. Tottenham

Sir Gilbert Laithwaite, KCIE., CSI.,
S.G.G. (Personal).

1 Not printed - refers to Doc 63

2 Doc. 63

3 See Doc. 69 - the final letter to the Province

67: Official Noting by G.C. Ryan (dt 9.9.43) (extracts)

File No. 7/23/43 - Home Poll (I)

[NAI]

The Communist Party's financial position as disclosed frankly, and I think accurately at least in respect of the Central Committee's finances, in Party letter No. 16, a copy¹ of which I place below for perusal and favour of return. Towards the end of 1942, in the first flush of enthusiasm after legalisation, the supporters of the Party collected funds with the utmost zeal and some of the wealthier members sold their property and donated the proceeds. This was corroborated

by our information and in our Survey for January–March 1943 we suggested that there might be a falling off in income as the reaction set in. This Party letter confirms our diagnosis. The statement on page 2 that 'Most of the provincial committees are facing financial crisis' is borne out by secret reports. There is nevertheless little danger of complete financial collapse, for although the party is not known to have any wealthy supporters, many of its leaders have private means or are supported by near relatives and their living expenses do not constitute a drain on the Party's resources.

Extracts from Official Notings on the Finances of CPI

On present indications, however, it seems that this year's drive for a 5 Lakh Fund will not succeed. The Party is undoubtedly passing through a period of retrogression, as is evidenced by the decline in the sale of the *Peoples' War* from 34,000 to 26,000 copies per week. (The paper was running at a loss even at its peak circulation.) Furthermore reports suggest that the public are growing apathetic to the present type of prowar propaganda, unrelieved by vilification of the authorities, and the 'Nationalist' Students movement is making headway in several provinces at the expense of the Communist Students Federation.² The left wing groups, principally the C.S.P., which have been dubbed the 'fifth column' by the C.P.I. are showing their resentment not only by denouncing the communists in illegal bulletins as traitors to the national cause but by resorting to violent reprisals, and in Bengal, where party feuds have been simmering for years, at least one communist has been murdered. Unless the communists can recapture public interest, and this seems doubtful without a change in propaganda, their financial prospects are likely to remain poor.

We have received a report from the Bombay Special Branch that the '*Daily Worker*' of England sent the C.P.I. Rs 4,000 in December 1942 and has been sending about pound 80 per month since February 1943 – enquiries about the nature of these remittances have been instituted through our London link. These sums are of course, a god-send to the party but are not sufficient to keep its head above water and they constitute a mere fraction of the total sum claimed to have been collected by the party up to May 1, 1943. There is no evidence or suggestion that the party is receiving any other funds from abroad.

It is noteworthy in this connection that in 1938 the then illegal party's apparent affluence and ability to run 6 legal papers led K.M. Munshi, the Congress Home Minister of Bombay, to conclude that the C.P.I. was in receipt of substantial funds from some mysterious source, possibly the Comintern. Our enquiries, then and subsequently, indicated that this theory was ill-founded and that the party was self-supporting. At that time the party was known to obtain a regular income by blackmailing Bombay millowners and other capitalists, an art in which S.A. Dange was particularly adept. The pro-war policy with its insistence on increased production and avoidance of strikes renders blackmail unprofitable for the present, but this disadvantage is outweighed by the increased facilities for collecting money which the party enjoys under legal conditions.

We have no information that any active underground organisation exists in any part of India. The only communists underground at present are a mere handful of unimportant party members wanted by the police for various offences. Plans may of course be ready and there may be a few 'dumps' where party records and old objectionable literature are stored, these 'dumps' however, are probably nothing more than a few boxes left with sympathisers. (A portion of the party's two lacs worth of paper may be stocked in some secret place as a precaution against a rainy day: I am asking the Bombay S.P. whether the location is known

of the lac and a half worth of paper shown to be in the possession of the Central Committee in the enclosed party Letter.) There is, in fact, very little incentive for the Communists to maintain even a skeleton underground organisation at present. In the first place, this would require a fair amount of expenditure, which the party could ill afford, on rent for 'dens' in the bigger towns and cities. Secondly, the communists have at present no reason to fear an unexpected conflict with authority. It is reasonable to think that they will cling to their legal status as long as it serves them in building up the party and consequently they will eschew unlawful practices, apart from occasional lapses in the field of propaganda. Once they decide to adopt a policy which is likely to provoke repression they will take steps simultaneously to re-build the underground organisation, which should not take them very long since all the leaders have considerable experience in this sphere activity. (It will be recalled that Joshi and Adhikari remained safely underground until the warrants against them were withdrawn in 1942 and the location of the secret party press has never been discovered). They will not take the plunge again without making adequate preparation and certainly they will avoid acting hurriedly if the step involves the loss of the considerable sums tied up in the '*Peoples' War*' and the People's Publishing House in the shape of printing machinery, paper and literature. To sum up: all the available evidence is against the theory that an underground communist apparatus is now in existence.

(G.C. Ryan
Assistant Director (R)
9.9.1943

Home Department (Mr Olver)

D.I.B. u/o No. 21/Bol/41, dated 10/9/1943.

Information P.S. might be interested to see this note.

(S.J.L. Olver)
10.9.43

V. Sahay.
11.9.43.

1 Not printed

2 See Ch XI for documents on this point [Ed.]

68: Official Note by G.C. Ryan on parallels between the British and Indian Communists (17 Sept. 1943) comments by Olver (20 Sept. 1943)

File No. 7/23/43 - Home Poll (I)
[NAI]

We have seen no authoritative exposition of the British Government's policy towards the Communists of Great Britain, but scattered reports indicate that both before and after the adoption of the Communist pro-war policy the Home Government has been able to deal with

the C.P.G.B.¹ in a rather more liberal manner than the Government of India could afford to adopt towards the C.P.I. Comparisons are, of course, complicated by the fact that the C.P.I. was unlawful until July 1942. Even more important for purposes of comparison, is the fact that the C.P.G.B. is something of an outcast in British politics (its application for affiliation to the Labour party was rejected in June 1943) whereas the C.P.I. has been functioning as a nationalist rather than a communist party and as such enjoys a considerable measure of toleration from the major parties of India.

Members of the C.P.G.B. have not been prevented from joining the British armed forces including the Home Guard. The Army alone has some seven thousand communists in its ranks. Although many British communists joined up with revolutionary ideas similar to those of the Indian communists, the Home Security authorities consider that they have made little progress in spreading their ideas. On the other hand, many of them, once insulated from constant Communist propaganda, have become innocuous and welcome the change of atmosphere. Leading communists, however, are not permitted to lecture to troops because it is considered undesirable that convinced and experienced communists, whose long term revolutionary outlook remains unchanged, should be given such facilities. (A permit, which was given by oversight to D.N. Pritt, K.C., M.P., to lecture to the forces on Russia and the Red Army was cancelled when it came to the notice of the British security authorities in January 1943).

British communists, even with long service in the party, are also admitted into Government employ and are allowed to deal with confidential documents; they are excluded, however, from specially secret work – the danger of allowing communists access to such information was brought out by the recent conviction of the C.P.G.B.'s national organiser, Springhall, vide our u/o No. 19/Bol/42 dated 27-8-43. As the latest Home Civil security Review states, party members still put loyalty to the party first. They will disclose to it such information as they feel it requires and the party will use that information irresponsibly according to its own lights, not necessarily in the interests of this country and certainly not actuated by any motives of loyalty to it.

As regards communist propaganda, the British Government could afford to be tolerant, since the C.P.G.B. had earned the contempt of the public by its numerous somersaults and by its servile submission to orders from Russia. Consequently even in the dark days of 1940, when the communists were pursuing their line of 'revolutionary defeatism', the only action taken (in May of that year) was to prohibit the export of some nine communist papers, including the *'Daily Worker'*. (It is to be noted, however, that the British communist papers were very cautious in their anti-war propaganda, in comparison with the underground press which the C.P.I. maintained until early in 1942). On 21.1.41, nevertheless, the *'Daily Worker'*, the only communist daily and the comparatively unimportant party organ *'The Week'* were banned altogether because they systematically opposed the successful prosecution of the war. This ban remained effective until 26.9.42, a year after the British communists had adopted their pro-war policy. The decision to raise the ban was delayed because it was considered doubtful whether the *'Daily Worker'* would, on its past record, be any less objectionable than before and the Government was averse to 'a cat and mouse policy'. The export ban on the *'Daily Worker'* was to have been raised in May 1943, but was postponed until July apparently because the paper's attitude on the Polish question was considered likely to cause embarrassment if it received wide circulation outside the United Kingdom.

Throughout the war it has been the British Government's policy not to detain communists qua communists. (Whether any were detained for individual subversive activities we are not aware). The considerations which underlay this decision are stated in the following extract from a Security Review dated April 1941 which we received from our London correspondent:

If the contention is once admitted that the Communists are not actively on the side of Germany and will not give direct aid to an invading enemy, no good case could be made out for anything approaching a mass detention of party members. Detention in individual cases as a penalty for hindering production can only act as a general deterrent if some method is evolved of giving publicity to the reason of detention.

'Communists are interested in the war only as likely to produce a revolutionary situation which will bring about the over-throw of capitalism. They hope to see the issue so long delayed that the victor is only less exhausted than the vanquished, so that the Soviet Union, which has had obvious difficulty in raising its strength above a certain point, will stand out like one whole man amongst a bunch of cripples. Consequently the main effort of the Communists is likely to be launched when the war has swung in our favour, in an attempt to delay or even reverse the result. An easily victorious Germany would be only less distasteful to their plans than an unhumbled British Empire.

If a stage is reached at which the Party finds it desirable to institute a campaign of sabotage - and it is suggested that such a decision would be taken only on direct instructions from the Comintern - there would clearly be cause to consider a policy of preventive detention as a short-term measure of protection. However necessary this policy might be, it could not escape comparison with the German concentration camps, and it would stir up a degree of ill-feeling and class hatred that the Communists of themselves would never be able to inspire in this country. It is felt that essentially the Communist problem is a long-term one, and that the approach to it must be on the lines of social reform. Only in this way can the supporters be drawn away from the revolutionary cadre. Once this has been done the residue of irreconcilables can be dealt with on their merits.

The C.P.I. and the C.P.G.B. are in regular communication and C.P.I. rarely withhold their correspondence. The C.P.G.B. does not attempt to give guidance to the C.P.I. but the latter may receive inspiration from this correspondence and from objectionable British journals which slip through the censorship net. The C.P.I. can also obtain a fair idea of the main trends of C.P.G.B. activity from many British newspapers and periodicals of various shades of opinion and from reports in the Indian press. Nevertheless, the similarity in the methods of the two parties derives not from imitation or systematic co-ordination, but mainly from the fact that their fundamental ideologies are the same and both had been accustomed for many years to pursue very similar opportunist tactics under the guidance of the Comintern. The leaders of both parties are steeped in the doctrine laid down in various communist 'classics' dealing with tactics and propaganda. On the other hand, their respective policies are capable of marked divergence, for example, the C.P.G.B. has been embarrassingly anxious to obtain official recognition and collaboration in many of its activities, whereas the C.P.I. has spurned the National War Front and carefully avoided any form of official assistance which might compromise it in nationalist eyes.

I have discussed the question of the C.P.I.'s finances in my u/o No. 21/Bol/41 dated 10.9.43.

G.C. Ryan
14.9.43

Home department. (Mr Olver).

D.I.B. u/o No. 31/Bol/42 d 18 Sept. 1943.

The fundamental difference is clearly that C.P.G.B. is working among a population which if not all 100% contented, at least incline to the view that revolution is a thing to be avoided whereas C.P.I. works on a population more or less unanimously revolutionary in outlook (in so far as it has any outlook at all) but luckily unable to continue at all in the methods it adopted to bring about revolution.

(S.J. Olver)
20.9.43

1. C.P.G.P. — Communist Party of Great Britain.

69: Government of India to all Provincial Governments (attitude of Government towards the Communist Party)

File No. 7/23/43 — Home Poll (I)

[NAI]

No. 7/15/42 — Poll (I).
Government of India,
Home Department.

Secret.

From
Sir Richard Tottenham, C.S.I., C.I.E., I.C.S.,
Secretary to the Government of India

To
All Provincial Governments.

New Delhi, the 20th September, 1943.

Sir,

The period since the removal, on July 23rd, 1942, of the ban on the Communist Party of India has afforded an opportunity to judge the success or otherwise of the policy set forth in Home Department letter No. 7/2/42 — Poll (I),¹ dated the 8th June 1942. The activities of the Communist party during this period, culminating in the recent Bombay Party Congress, have been comprehensively reviewed in the periodical surveys issued by the Director, Intelligence Bureau, which are supplied to Provincial Criminal Investigation Departments; and it is not necessary therefore, to examine these activities in any detail. Before outlining the considerations on which Government's further policy towards the Communists should in our view be based, a very brief indication of what we conceive to be the salient features of Communist activity during this period may however be of value.

1. (a) *Communists and Congress*: Before the August rebellion the Communists denounced in their illegal publications the defeatism of Congress, as playing into the hands of the Axis. Subsequently, they have vociferously condemned the arrest of Mr Gandhi and the working Committee and have persistently demanded their release. These demands have been supported by a campaign for reconciliation between the Congress and the Moslem League with the professed object of forming a National Government. The attacks on Government which have accompanied this propaganda in the Communist Press at times been embarrassing and we are aware of the disquiet felt by some Provincial Governments on this score.

(b) *Students*: The Party has, as a whole, exercised a restraining effect on students, and its influence over the student community, though not great, has, such as it is, been used in the direction of preventing student strikes and disorderly demonstrations. This was notably the case during Mr Gandhi's fast, when the comparative absence of serious trouble in the student community may in some small part be ascribed to Communist influence.

(c) *Labour*: The Party has made every effort to extend its influence with labour, though it is doubtful whether any great success has been achieved; certainly the Party's claims are exaggerated. Such influence as the Party has with labour appears generally to have been exercised in the direction of opposing or minimising the effect of strikes. There seems no doubt that the Communists continue to oppose any interruption of war production, including strikes, and it seems probable that cases in which local Communists have supported strikes were generally due to irresponsibility and lack of Party discipline.

(d) *Kisans and the food situation*: Alarmist reports regarding the food situation and criticism of Government's dealing with it have figured prominently in the Communist Press. The methods advocated by the Party for dealing with the food problem have not, however, been such as would cut across or interfere with the Government of India's policy in the matter as a whole, and no objection can be taken to the Party's general attitude on this subject, apart from the alarmist nature of its propaganda.

(e) *Army and services*: Not much progress appears to have been made in the Party's plans for the establishment of 'cells' in the Army nor does the Communists' threat to the loyalty of the Army, the Police or other forces appear at present to be serious. While vigilance on this account by the Army and the police cannot of course be relaxed, we are not aware of any serious grounds for anxiety at present.

(f) *Propaganda*: It is undoubtedly to the Party's propaganda activities during the period under review that the greatest objection can be taken and 'People's War' in particular has frequently overstepped permissible bounds in its attacks on Government. The Party's pro war propaganda has almost invariably been heavily interlarded with attacks on bureaucratic inefficiency, the effect of which must have detracted from the value of its condemnation of sabotage and fifth columnists. Any judgment of the Party's propaganda must, however, in our opinion, take a broad view of the period as a whole. At the time of the legalisation of the Party, a Japanese invasion of India seemed imminent and, in a generally defeatist atmosphere, the Communists were almost the only political party which stood for resistance to the aggressor, apprehended mistrust on the part of the public of the reasons for the release of Communists and of their apparently pro-Government attitude led to an increasing admixture of anti-Government 'seasoning' in their pro-war propaganda; the Congress rebellion then faced the Party with the alternatives of open opposition to Congress, for which they were not strong enough, or support of the Congress leaders, the latter alternative being chosen; later, improvement in the war situation provided a breathing space in which the party could concentrate on internal

organisation and expansion; finally, increasing confidence in its own strength has produced a tendency for the Party to resume its pro-war and anti-Congress propaganda.

(g) *Party discipline:* The party has always numbered in its ranks persons who, although calling themselves Communists, pay the merest lip service to true Communist theories and are solely interested in the speedy and violent overthrow of British rule in India. These persons, mostly ex terrorists and revolutionaries, pay scant attention to Party directives and have made little or no effort to assimilate and follow the Party's pro-war policy. The Central directorate claims to enforce strict Party discipline but here again its claims are exaggerated. Indeed the recent efforts of the Party to increase its paper strength may well have resulted in the inclusion of a number of persons of this type who profess communism as a cloak to hide other more nefarious activities.

3. The period under review culminated in the Party Congress held in Bombay from May 23rd to June 1st 1943. The principal outcome of the Congress was the adoption of a new Constitution for the Party and the passage of a political resolution. The new Constitution, replacing the one drawn up in 1939, is designed, in contrast to its precursor, as the basis of a *legal* political Party; it makes no mention of any *illegal* Party Organization; and it is thus a measure of the Party's confidence in its newly found legal status. The preamble most significantly omits any reference to the notorious 'Draft Platform of Action' prescribing the violent overthrow of British rule in India by a revolution based on the Russian model, which was formerly the central plank of Communist policy in this country. Instead the Party now seeks to build a 'National United Front of the entire freedom-loving people of India for the defence of the country from Fascist aggression and for its liberation from Imperialist enslavement', for which purpose constitutional methods are presumably not debarred. The Political Resolution re-affirms that the war is a 'people's war' against Fascism and that the freedom of India depends on its outcome. It then proceeds to discuss the 'National Crisis' and though the usual criticism of bureaucratic repression is present, it is on this occasion leavened by an attack on the negative policy of the Congress and the Resolution openly identifies, for the first time, the Congress Socialist Party and the Forward Bloc with the Fifth Column agents who are accused of taking advantage of the Congress Resolution of August, 1942, to lead the country to the brink of disaster. Most striking of all, however, are the admissions made in the Resolution of serious flaws in the Party's policy since August, 1942. It is admitted that Communists concentrated on 'wordy abuse' of the bureaucracy while failing to expose the 'negative and defeatist policy' of the National leadership; that during the campaign for the release of political prisoners there was a tendency to overemphasize the repression theme; and that, in its food campaign, the Party aimed at the exposure of bureaucratic inefficiency rather than at constructive action, oblivious of the fact that such propaganda 'leads not to food but to riots'.

4. It is clear that during the period under review, the Communists' principal preoccupation has been to increase the strength of their Party. There is no doubt that they have achieved some success in this though the published figures of Party membership are doubtless exaggerated, with this success has come a spirit of confidence which was reflected in the Bombay Congress and the effect of which must, in our opinion, be good. Most of the objectionable manifestations of Party policy hitherto — their hesitancy in condemning Congress; their support of the leading national figures, particularly Mr Gandhi; and above all, their persistent vituperation of Government, even when the latter's aims differed little from their own — can be plausibly, if not justifiably, attributed to their paramount need to build up the party strength

As that strength increases, the need for such divagations from a truly communist policy may decrease; and the Bombay Communist Congress, with its open criticism of the Congress Party, whether or not it heralds such an era of independent Communist policy, clearly revealed a marked improvement in the Party outlook.

5. The activities of the Communist Party may be judged from two very different aspects, which we shall for present purposes call the long-term and short-term views. The long-term view must be taken as embracing the probable course of events after the war and from this point of view the fundamentally opportunist character of the Party must not be lost sight of. It is primarily a Nationalist Party working for Indian independence notwithstanding its lip service to Internationalism; and a large proportion of its members are attracted to its fold because it stands for the overthrow of British rule. It is not difficult then to conceive of circumstances *post bellum* in which, with Russia looking towards India, a strong and well organised Communist Party in India might be a serious menace. There is on the other hand little to suggest at present that the aims of the Communist Party of India will conflict with the policy of His Majesty's Government to a greater degree than those of any other Indian Party. Indeed there are reasons for welcoming the development of a Party basing its policy upon a positive attitude towards economic problems rather than, as is the case of the major parties, on narrow and outmoded racial and communal antipathies. Further, though the Communists have not hitherto come far into the open in opposition to Congress, it is evident that the two parties cannot travel the whole length of the road together and, in particular, that the Communists are more likely than any other party to come into conflict with the moveable interests which are at present behind the Congress. On a short-term view, the ruling criterion must clearly remain the Communists' attitude to the war (even if that attitude is itself opportunist in character) and the effect of the party's activities on the war effort. It is Government's prime duty to create and preserve the internal conditions which are necessary for the successful defence of India and the victorious prosecution of the war; and we have to take into consideration the fundamental fact that the major obstacle with which we are faced in this task is the anti-war and defeatist attitude of the Congress. Not only are the Communists almost the only Party who openly preach that this is a 'People's war' in which wherever it is fought, victory is an end in which every citizen should be interested; they alone, however hesitantly, have criticised Congress defeatism from a political point of view (as opposed, for instance, to the fundamentally communal criticisms of Congress policy voiced by the Moslem League etc.) and have openly attacked as traitors the offshoots of Congress, the Forward Bloc and the Congress Socialist Party. The brief review of the Party's activities given in the preceding paragraph should indicate that, leaving aside the irresponsible behaviour of individual Communists who have refused or failed to submit to Party discipline, it is principally in its propaganda that the Party has given real cause for anxiety since its legalisation, and that there is little in the aims underlying its Unity, Labour, and Food campaigns to which serious exception need be taken.

b. The considerations of long term policy set forth above are not in our view conclusive either for or against the Communist Party, and probably the most that can be said on this score is that their very inconclusiveness strengthens the view that Communist policy should for the present be judged on its short-term merits. On the short-term view, we consider that events during the period under review have, even taking into consideration the many objectionable features of Communist propaganda and the subversive activities of individual Communist supporters, largely justified the policy enunciated in paragraph 2 of our letter of

the 8th June, 1942, namely of allowing freedom of action to the adherents of any party in India prepared to help the prosecution of the war and to form a makeweight to the defeatist tactics of Congress. These two objects remain the principal criteria on which the success or otherwise of our policy in dealing with the Communist must be judged; and our conclusion is that for the present the attitude to be adopted towards the party must be one of neutrality. (On the one hand, there is no reason to accord to Communists any privileges or immunity which members of other legal political parties do not enjoy. On the other hand there should be no discrimination against them merely on the basis of their past record and members of the Party should not be regarded with suspicion or arrested merely because they are Communists. In so far, however, as the activities of individual Communists constitute a danger to the internal peace of the country, firm action must be taken to moderate or if necessary to repress them.

7. The main difficulty in applying this policy is likely to arise from the tone adopted by Communist propaganda. It is clearly impossible to expect Communists to adopt a wholly loyalist attitude; as Communists and Nationalists they are fundamentally opposed to 'Imperialist domination'. As pointed out earlier in this letter, however, the vilification of Government which has hitherto unfortunately played such a prominent part in Communist propaganda has been in large measure due to their need to retain a national and popular appeal in order to increase the strength of the Party; and it may be that as the Party becomes more solidly established, this anti-Government bias will decline. This hope is strengthened by the increasingly satisfactory tone of recent issues of 'People's War'. Serious efforts are evidently being made to free 'People's War' from the 'Left Nationalist Deviation' to which we referred in paragraph 4 above, with the result that the latest issues of the paper have contained outspoken condemnations of all forms of hoarding, exploitation and sabotage, while being at the same time much more free from criticism of Government. On the other hand it has been revealed that Communists still feel that, despite the lifting of the ban on the Party, they are looked upon as outcasts or regarded with undue suspicion and are generally cold-shouldered by Government and its officers; this in turn tends to aggravate the tone taken by their propaganda. The existence of this feeling whatever the foundation may be for it, in itself implies a desire on the part of the Communists to maintain good relations with Government and to deserve the Government's confidence. Nothing but good can come of encouraging such a desire and responding to it so far as their own action makes it possible to do so; and we suggest that this can best be done by personal contacts between the higher officers of Provincial Governments and leading members of the Communist Party. We are aware that such personal relations have been established in some Provinces, and we think they might with advantage be extended as likely to lead to better understanding on both sides. Such occasions could at any time be used to convey an informal warning where the activities of Communists seemed likely to overstep the mark or to indicate directions in which their avowed object of helping the war effort could more usefully be pursued.

8. To summarise briefly. We consider that the Party's activities since its legalisation in July, 1942, have, despite the frequently objectionable nature of Communist propaganda, largely justified the policy laid down in our letter of 8th June, 1942, based on the view that the responsible members of the Party are at heart genuinely pro-war and anti-Fascist. We consider that an attitude of neutrality should be adopted by Government to the Party and that the activities of its members should be judged in the light of whether they tend to assist or to obstruct the prosecution of the war. Any activities which tend to assist the war effort should

be encouraged e.g. it might be possible to supply suitable material for publication in the Communist journals or for use by them in their propaganda. We do not wish any sort of immunity from legal action to be conferred on Communists nor, on the other hand, do we wish discrimination to be exercised against them merely owing to their membership of the Party. The Party's propaganda activities will, equally not be immune from the law; we believe, however, that a useful moderating effect will be achieved by personal contact between the officers of Government and leading members of the Party and we urge that the fullest use should be made of such contacts. We consider it desirable that District Officers should be made fully aware of the policy of Government towards Communists so that the intentions of Government may not be thwarted by well-meant but ill-informed action on the part of local authorities.

I have the honour to be,
Sir,
Your most obedient servant,
Secretary to the Government of India

No. 7/15/42 - Poll (I), New Delhi, the 20th September, 1943.

A copy is forwarded to all Chief Commissioners
(Except Panth-Piploda).

By order
Under Secretary to the Government of India

No. 7/15/42 - Poll (I).
New Delhi, the 20th September, 1943.

A copy is forwarded to:
Secretary to the Governor General (Personal).
Secretary to the Governor General (Public).
Political Department.
External Affairs Department.
War Department.
(Railway Department) (Railway Board)
Director, Intelligence Bureau.
Director, Military Intelligence.

By order,
Under Secy. to the Government of India.

Au. (38/18-9-43)-D.

1 Not printed



70: Secretary, Malayalee Conference, Bombay to Secretary, Kisan Sabha, Calcutta

Govt. of Bengal Office of the D.C.P. (Sp. Br) File No. SK528/43
[Bengal State Archives]

Copy of a English letter dated the 22nd September, 1943 bearing the postal seal of issue Bombay the 23rd Sept. 1943.

From signature illegible, for secretary, the Bombay All Malayalee Conference, opposite K.E.M. Hospital, Parel, Bombay.

To Com, Bankim Mukherjee, President All India Kisan Sabha, c/o Communist party Office, 249 Bow Bazar st. Calcutta.

Dear Com.

It has been decided by four premier Malayalee organisations in the city (The Bombay Malayalee Sabha, Keraliya Thozhilali Seva Sangam, Kerala Muslim Association and the Kerala Muslim Janagatha) to hold a conference on the 8th Oct. 1943 of all Malayalees residing in Bombay for mobilising them for the speedy release of National leaders, achievement of National Unity and solution of the grave food problem. In this endeavour we are glad to say that we have the co-operation of all sections of people, including Congressmen, Communists, Leaguers etc who recognize the emergency of a united action on these to approach you for your support to this conference. We shall be highly obliged if you will kindly send us a message giving us your guidance.

Yours faithfully,

Signed illegible.

For Secretary.

Submitted.

27.9.43.

71: Copy of Review of Communists activities in Madras Province for the quarter ending 30th Sept. 1943

File No. 7/23/43 – Home Poll (I)

[NAI]

During the quarter the main theme of the Communists' propaganda has been increasingly severe criticism of Government's food policy. There can be no doubt the Communists are doing all they can to derive political capital from the food situation. In one district at least Communist speakers took advantage of the absence of the police at the meeting to advocate the overthrow of British rule. In the Railway labour sphere they have not yet done anything overt likely to kinder the prosecution of the war.

As a development to their preparatory and persistent organising work, Bombay Communist S.S. Mirajkar, 'B.T. Ranadive' and Miss Shanta Bhale Rao visited the Province, took an active part in the first Trade Union Conference held at Coimbatore and visited many labour centres.

The anniversary of the Congress rebellion saw the Communists doing a fair amount of propaganda against the revival of any sabotage. This action has resulted in the growth of a certain amount of antagonism against the Communists, particularly in Malabar where the Party's hold on the masses is waning owing to its denunciations of present Congress policy. The Malabar Communist leaders E.M. Sankaran Nambudripad' and P. Krishna Pillai are touring Malabar to try to off-set this tendency. At the beginning of the quarter the third Andhra Provincial Communist party Conference was held at Bezwada, which attracted a large gathering of Communists including P. Sundararama Reddi who took an active part.

The Communists have also been busy raising subscriptions to the Bengal and Rayalseema Relief Fund, while in Malabar they have been collecting funds for the relief of persons affected by the cholera epidemic there.

A Women's Training Camp was held at Guntur at which 25 women were given instructions on various aspects of Communist propaganda.

Labour: Though labour has been restive, this restiveness cannot wholly be attributed to the communists. They are doing all they can, however, to obtain control of labour, particularly of those Railway Unions hitherto not under their control. They are also making a drive for the allegiance of the textile workers in the Province. In this connection V. Chakarai Chettiar ex-Mayor of Madras, is being used as the mouth-piece of the City Communist workers but it is doubtful whether he will be prepared in the long, run to, go as far as the Communists would like.

Kisans: A Kisan Camp was held at Ramachandrapur in the East Godavari, district in the quarter, while the third Guntur District Agricultural Labourers' Conference was held under Communist auspices and was attended by about 8,000 Kisans. The Malabar and Tamil Communists are doing active propaganda in favour of Kisan Sanghs in those areas, while B. Srinivasa Rao, the organising Secretary of the Tamil Nadu Kisan Sangh, has been touring the southern districts in the Province urging concentration on a few villages and not by attention to many.

Students: Students all over the Province remained divided as a result of conflicting loyalties to the National Students Organisation inspired by Congress and the Communist controlled Madras Student Organisation. There is a move, at present somewhat nebulous, to amalgamate both organisations. The Andhra Provincial Students Federation and the Madras Students' Organisation, both Communist bodies, are doing all they can to counteract the influence of the National Students' Organisation. Only a very few students in Madras City and mufassal absented themselves from the classes on the anniversary of the Congress rebellion.

Literature: The People's Publishing House, Bombay continued to be the main source of Communist literature, a considerable number of Communists act as agent for the distribution and sale of material put out by this house. The somewhat improved tone of the People's War is reflected in the tone of Communist journals in this province.

Police Action: During the quarter eight Communists whose real allegiance to the party line was very doubtful, were arrested under Rule 129. D.I.R. in connection with the rebellion anniversary, while three Communists were arrested for bringing about strikes by the P.W.D. workers and for creating trouble in agricultural labour centres.

72: Government of India to all Provincial Government's (on Bolshevik Party of India)

File No. 12/1/43 – Home Poll (I)

Government of India,
Home Department.

Express Letter

From
Home, New Delhi.

To
All Provincial Governments and
Chief Commissioners (except Panth-Piploda).

No 12/1/43 – Poll (I)

New Delhi, the 15th October 1943.

Attention is invited to our letter No. 7/15/42 – Poll (I), dated 20th September, 1943,¹ regarding policy to be adopted towards the Communist Party of India.

2. A very similar problem though on a very much smaller scale, arises in regard to the treatment of the Bolshevik Party of India alias Labour Party of India. A brief note on the activities of this party is enclosed.² We have no reason to believe that the party is not genuine in its present support of the war effort, although as in the case of the Communist Party, there may well be individuals in it who have failed to assimilate the new party line and refuse to adhere to party discipline. We believe that the consideration set forth in paragraphs 6, 7 and 8 of our letter of 20th September in respect of the Communists apply with equal force to the Bolshevik Party, with this additional point in the latter's favour that it has never so far as we are aware indulged in the objectionable type of anti-Government Propaganda which was so marked a feature of the Communist Programme.

3. We are aware that the influence of the Labour Party of India is extremely limited; we understand however, that it has had a definitely steadying effect on Labour in Bengal, and while not wishing in any way to suggest that members of the party should be treated as immune from the law, we consider that they should be treated on the merit of their present actions and whether these tend to assist the war effort, rather than on their previous histories. We trust, therefore, that you will agree to apply the principles summarised in para 8 of our letter of 20th September regarding the Communist Party to the Bolshevik Party of India also—

(R. Tottenham)
Additional Secretary to the Government of India.

1. Doc. 69.

2. See Enclosures in Chapter X. Doc. 34. Also see Docs in Chapter II – 34, 36, 37 & 39.

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Government of Bihar to the Government of India

File No. 7/23/43 - Home Poll (I)
[NAI]

Serial No. 8
No. 3018 C. 526/43.

Government of Bihar
Political Department.
(Special Section).

Patna, the 21st October, 1944.

From
Y.A. Godbole,
Chief Secy. to Govt.

To
The Secy. to the G.O.I.,
Home Department, New Delhi.

Sir,

I am directed to reply to Home Departments Secret letter No. 7/15/42 - Poll (I) dated the 20th Sept. 1943¹ on the subject of the attitude to be adopted towards the Communists. In that letter the Govt. of the India suggest that personal contact should be established between 'the higher officers of provincial Governments and leading members of the Communist Party' and that 'suitable material should be supplied for publication in the Communist journals or for use by them in their propaganda'. I am to say at once that, in the view of this Government, such a course of action could have no other effect in this Province than that of alienating the large number of persons who, though not perhaps so vocal as the Communists, have done far more than they have to help in the prosecution of the war and to assist Govt. in maintaining the standard of civil administration necessary for that end. It would undoubtedly, at any rate in this Province, also have a bad effect on the morale of the public services, particularly the magistracy and the police, and would be considered to be yet another sign that Govt. were weakening and were again throwing over their professed friends in order to placate their avowed enemies.

2. It is true as the Govt. of India point out that the Communist openly declare their 'pro war' and 'anti-fascist' attitude. They do little however to practice what they preach. As the Govt. of India admit, they 'vociferously condemned the arrest of Mr Gandhi and the Working Committee have persistently demanded their release'. The Govt. of India also take consolation in the fact that 'not much progress appears to have been made in the party's plans for the establishment of 'cells' in the Army nor does the Communists threat to the loyalty of the Army, the police or other force appear at present to be serious'. It would be expected of a party which professed to be pro-war that they would support Government - as Mr M.N. Roy's party has done - in

their action in keeping in detention the leaders of a party which was responsible for organising a rebellion last year, undoubtedly in the belief that the Japanese would win, and that, to say the least, they would abstain from any attempt, however unsuccessful they may have been up to now, to undermine the loyalty of the Army and of the police. The Government of India admit that the propaganda of the party since its legislation have given cause for anxiety and they refer in particular to the party's organ the *People's War*. This Govt. understand that the tone of this paper was such that action had to be taken against it under the Indian Press (Emergency powers) Act by the Bombay Government. Since then it is possible its tone may have improved, but it would obviously be liable to wide misconstruction if Government were, as is suggested to assist the party propaganda by providing their papers with suitable articles which, though they would doubtless be published, could have no other effect than that of increasing the attractiveness of publications whose main object was to bring the existing Govt. into contempt and, on one excuse or another, to obtain the release of the unrepentant leaders of the Congress rebellion.

3. The Government of India are inclined to discount the pro-Congress activities of the communists, in particular their support of the Congress, on the ground that this was necessary in order that the party might increase its influence. In the opinion of this Government this is a correct diagnosis as far as it goes. But the Communists cannot be at the same time pro-war and pro-Congress. Before Government can give any support to the Party it would seem necessary to come to a decision on the question which of their attitudes is the true one. In the opinion of this Government, the Communists' chief hope is in restoring the influence and prestige of the Congress, and their profession of support of the war is mainly propaganda desired to throw dust in the eyes of Government and those loyal elements of the population who distrust them on their past record. According to the latest policy of the party, adopted in June 1943, their object is the liberation of the country from Imperialistic enslavement. This can mean nothing but the overthrow of the present Government. The restoration of the prestige and influence of the Congress party and if possible its return to power are obvious steps — towards the weakening of the present Government and its ultimate overthrow possibly, as suggested in the letter under reference with the help of Russia. Nor should the fact be lost sight of that party desires to start its programme of weakening Government immediately, oblivious of the fact that this could only retard the winning of the war. The Government of India's contention is that, once they have gained power, the communists will deviate less from a truly Communist policy and that they may even deviate less to the left. The reason for this hope is not clear. The aim of the Communist party in every country in the world has hitherto been the same, namely the overthrowing by violence of the existing Government and the setting up of a Marxian dictatorship. In the sense it is true that the Communists may oppose the moneyed interests that support the Congress but they are unlikely to do this until they have got rid of the British connection and the only result may be chaos and bloodshed. In any case I am to point out that many persons of influence and position, in particular the landed classes, support both the war and the present Government and the Communists are as likely to seek to destroy them as to destroy the mercantile moneyed class.

4. The Government of India draw a distinction between orthodox Communists and persons who merely pay lip service to the Communist theories. But in practice it is difficult to draw the line. The leaders of the Party may, for their own reasons, have adopted for the time being a policy of non-violence adopted for support of the war, which may make some of their less for seeing members impatient. But the only real difference between them would appear to be

their estimate of the correct time openly to pursue their real aims. Encouragement of the one would encourage the other and lead to a serious paralysis of the executive in dealing with those of the party who are menace to the public security.

5. The general argument set forth in the previous paragraphs apply with peculiar emphasis to this province in which the Congress still has considerable power and in which some of its left wing adjuncts such as the Congress Socialist Party, are still almost in open rebellion. Government officers of all ranks have been perturbed by what they feel to be a policy of appeasement towards a subversive party and their perturbation has frequently been revealed in reports from District officers. The Provincial Government would find no little difficulty in explaining to their local officers the benefits of a policy of benevolent neutrality and fraternization with Communists based on conclusions so hesitant as those stated in your letter.

6. The policy adopted in this province towards Communists has been in the past one of strict neutrality in the sense that since the ban was removed, members of the Communist party have not been condemned as such but have been dealt with strictly on their merits. For the reasons given above which indicate that for Government officials to 'fraternize' with prominent Communists would impede rather than help the prosecution of the war, this Government would prefer to continue that policy and hope that the Government of India will have no objection to their doing so.

Yours etc.
Signed/ Chief Secy. to Govt

1 Doc. 69.

74: Official Comment on Bihar Government's letter (Doc. 73) (dt 27.10.1943) (extracts)

File No. 7/23/43 - Home Poll (I)
[NAI]

I have the following comments on the Bihar Government letter of 21st October:

(a) In their first paragraph, Bihar say that the proposed contacts between provincial Government Officers and members of the Communist Party would be 'yet another sign' that Government were weakening and would alienate Government's 'professed friends' It is clear from the last part of para 3 of their letter that these 'professed friends' are in fact the Zamindars and large landholders. I am not aware that the Bihar Zamindars on the whole emerged with any very creditable record from the Congress disturbances - rather the contrary - and they are I would suggest very fairweather friends and no very substantial support against Congress. So far as I am aware, the Government of India have so far given no sign of 'weakening' and if the proposed contacts with the Communists would be 'yet another sign', we can only presume that the previous signs were given by the Provincial Government itself. In any case, I fail to see why the mere fact of contact between the Provincial Governments officers and Communists should have so depressing effect. Are we to imagine that all the Provincial Governments maintain a state of splendid isolation from all forms of political contact? Do they for instance

receive no visits from members of the Muslim League, for fear of provoking communal riots? Do they receive no visits from that class of moderates, both intellectuals and industrials, who are supporting Gandhi far more actively and openly than the Communists?

(b) In para 2 of their letter Bihar have taken some quotations from our letter which entirely divorced from their context, appear to support the Bihar case. We could equally easily quote against it. Our letter explained at some length the grounds we had for supposing that, with increasing strength and confidence, the Communist Party's support of Congress would decrease and they would tend to come out more into the open against Congress; this has been entirely ignored by Bihar. Our diagnoses have been amply justified by the conduct of the Communist Party since the period covered by our letter. Bihar point to the singularly inept action taken by Bombay against the '*Peoples' War*' and suggest that improvement in the tone of the '*People's War*' has resulted from that action. This is of course completely false, '*Peoples' War*' has shown a progressive and fairly steady improvement in tone since the Party Congress in May. To suggest that the main object of the Communist propaganda is to bring the existing Government into contempt seems to me to be deliberately blinding one self to the contents of recent issues of '*Peoples' War*'. While Government does not hesitate to supply material to the various nationalist dailies (I believe the '*Searchlight*' is still however out of publication) which are at least as vigorous in their propaganda for the release of the Congress leaders as are the Communist publications.

(c) As stated above, we explained clearly in our letter the circumstance under which the Communists were driven to support the Congress, and expressed the hope — which has since been justified — that growing party strength would result in an increasingly strong and open anti Congress line. We may agree with Bihar that the Communists cannot be at the same time pro-war and pro-Congress, and complete that statement by saying that they are undoubtedly anti-Congress. We have already come to a decision on the question whether their pro-war attitude is a genuine one, and have given good reason in our letter for believing it to be so. Bihar hold the contrary opinion that the Communist policy is primarily pro-Congress; they have given no grounds to support this opinion; and even had they done so, their opportunities for observing and judging of the party's real aims are very much less extensive than ours.

(d) Bihar hold that the Communist Policy of liberating the country 'from imperialistic enslavement' can mean nothing but the overthrow of the present Government. This is of course true, but do Bihar therefore suggest that the present form of Government is to be eternally perpetuated? H.M.G. have already promised that the present Government shall in due course be replaced by a nationalist Government, and that the latter shall be free — if it wishes — to throw off all 'imperialist' ties. The Communists, along with every other party in India including M.N. Roy whom Bihar quote against us — except possibly the Muslims, are preaching the need for a national Government. In common with the others they advocate — at present at any rate — constitutional means to attain this end. Where they differ from the majority of the rest is that, meanwhile, they are prepared to advocate positive measures such as, for instance, cloth control, industrial co-ordination, food committees etc., to deal with pressing problems of the day and are prepared to cooperate with Government in the taking of the necessary steps to this end.

(e) I am not aware in what portion of our letter we expressed the hope that future Communist policy would 'deviate less to the left'. Had we made such a statement we could easily support it by drawing attention to the evolution of Communist policy in Russia, which has been progressively away from the left. In any case, I fail to see the relevance of this remark. The

two suggestions that follow, the first that the Communists are likely to wait till they have got rid of the British connection before attacking Congress industrialists, and the second that they are in any case just as likely to seek to destroy the landed classes as the industrialists, are both of them falsified, the first by facts the Communists are already openly attacking Congress industrial magnates particularly over cloth control, but in a number of other connections as well, and the second by an elementary knowledge of Communist theory, which is built up on the need for first winning over industrial labour, before proceeding to endeavour to touch the land, the evolution of Communist policy in Russia is an obvious illustration of how this theory was put into practice. Eventually, the present semi-feudal state of the large zamindars must presumably go and if the entire Bihar Government policy is built on support of the Zamindars, then I should say that the sooner it is reconditioned the better.

(f) One can only suppose from para 4 of the Bihar letter that their Police and Intelligence authorities are not capable of drawing the necessary distinction between true Communists and Congressmen masquerading in Communist disguise. That this problem exists we have admitted in our letter, as also the fundamentally opportunist nature of Communist policy. This does not detract from the fact that communist policy does exist and is loyally obeyed by a fairly large cadre of Communist Party members. To encourage false Communists would admittedly be to support Congress and if the Bihar authorities are unable to make the necessary distinction, then there is perhaps some danger attaching to the policy we have advocated. The Bihar attitude in that case is a distinctly alarming confession of weakness. The suspicion that they may have failed to make the necessary distinction is strengthened by para 5 of their letter, in which they appear to lump together Congress Socialists and communists

(g) I have remarked above about this mysterious policy of appeasement. It might be as well to point out to Bihar that we know of no such policy and to ask them exactly what they have in mind.

(h) The whole object of our letter was to ensure that Communists should be treated with strict neutrality and in para 6 of their letter Bihar stated that this has been their policy all along, thus implicitly accepting all that we have had to say. The proceeding paragraphs of their letter, however, give ample grounds for doubt as to the genuineness of this neutrality, and it seems to me that, if Communists in Bihar have not been condemned as Communists, they have instead been condemned as Congressmen!

(S.J. Oliver)
Under Secretary.
27.10.43.

75: Official Comments on Bihar Government's letter (contd.)

File No. 7/23/43 - Home Poll (I)
[NAI]

Official Notings

The Bihar letter¹ bears the clear mark of the former collector of Cawnpore² and I am not

surprised – that Cawnpore Communists were a terrible nuisance. The point however is that they are not at present, and this is what Bihar have not sufficiently allowed for.

I do not believe that giving Communists audience which is different from fraternization or supplying their Press with material (and this is all the 'appeasement' we have suggested) will alienate anybody (except the Royists and the Congress Socialist Party).

I do not see however that anything very much can be done to alter the Bihar attitude. The crux of our suggestion was that Communists be 'handled' and that cannot be done by unwilling hands.

We may wait for other replies for the present.

V. Sahay
29.10.43.

1 Doc 73.

2 This is an oblique reference to the fact that the acting Governor of Bihar, Sir F. Mudie, belonged to the UP Cadre of the I.C.S. and had his district experience in Western U.P. [Ed.]

76: Official Notings on Bihar Governments letter¹ (contd.) (dt 30.10.1943–20.11.1943)

File No. 7/23/43 – Home Poll (I)

[NAI]

Para 6 of the Bihar letter is certainly something of an anti-climax, after the thunder of the four paras! They have put a wrong interpretation on the phrase 'establishing contacts' and built up the whole argument on these mistaken premises. We may entirely agree that the communists cannot be both pro-war and pro-Congress and the main object of our suggestion reg. contacts was that this simple truth should be continually brought home to them. It is just as possible for a Government official to see a person for this purpose of telling him exactly where he gets off, as it is for the purpose of making friends – and if the two processes can be combined so much the better, I think we should content ourselves with pointing out the basic fallacy on which the letter is written.

R. Tottenham
30.10.43

The Bihar letter merits all the criticisms which have been made in the above three notes. I am afraid that the truth of the matter is that Bihar are not prepared to give to C.P.I. the same chances as other parties because proprietary interests in that Province are particularly susceptible to their long-term policy. It is nowhere shown that, so far as the short-term war issue is concerned, the Communists are doing harm. And it is of course useless any Govt. to accuse people whom it make no effort to understand, or to except co-operation from those whom it treats with hostility. I think a short letter on the lines suggested by Add. Secy. will be sufficient; adding, perhaps, that we do expect neutrality to be impartial!

R.M. Maxwell
31.10.43

Addl. Secy.

Evan Jenkins, P.S. to the Viceroy to the Home Member on the above subject.

New Delhi
14th Nov. 1943

My dear Sir Reginald,

His Excellency has seen the Home Department file returned herewith, and has asked me to let you know that as the treatment of the Communist Party is a matter on which the Government of Bihar feel strongly, it would in his opinion be useful if a discussion could take place between yourself and the Governor of Bihar who will be here for the meeting of Governors on the 19th and 20th instant. The Official letter which the Home Department proposed to issue might lead to further protests from the Government of Bihar, which might be avoided by an exchange of views with the Governor.

Yours sincerely

The Hon'ble

Sir Reginald Maxwell, K.C.S.I., C.I.E.

I discussed this case briefly with Mr Mudie¹ yesterday. He explains that the situation in Bihar Province is still far from normal and its main object is that his hand should not be forced at present. I told him that we had no desire to do so.

2. Since the last words of the Bihar letter of 21st October contained an implied question it would perhaps be polite to send some official reply. But in view of my personal conversation with the Governor a very brief reply will now be sufficient. I think we should say that our letter of the 20th September was intended only to supply Provincial Government with a balanced appreciation of the results of the policy explained in our letter of the 8th June 1942 and to explain why we consider it safe to maintain that policy. It was not intended to suggest any new policy or sudden change in the attitude which should be taken up towards the Communist Party of India. We hope that the Provincial Government will bear in mind the general policy in any question affecting the Communists which may come before them. But they are, of course, entirely free to judge requirements in the light of any local situation with which they have to deal and must naturally decide for themselves whether any instructions to District officers are necessary.

(R.M. Maxwell)
Home Member, 20.11.43

1 Doc. 69

2 Acting Governor of Bihar, Sir Francis Mudie



77: Resident, Madras States to the Diwan of Travancore enclosing a letter from a member of Tamil Nadu Communist Party of India

Government of Travancore (Confidential Department) File No. 661/43 C.S.
[Kerala State Archives]

Government of Travancore

Confidential Department

No. D. Dis. 661/43/C.S. Dated 8-11-43.

Subject: Letter from a member of the Communist Party of India Tamil Nad Committee, Madras to Comrade A.K. Thampy, Communist Party Office, Trivandrum – enquiry about the –

Secret

Madras States Agency, Trivandrum

The Residency,
Trivandrum,
4th November 1943.

No. C3-3288/43

My dear Sir C.P.,

I enclose for your information copy of a letter dated 27th October 1943 from a member (name not legible) of the Communist Party of India, Tamil Nad Committee, Madras to Comrade A.K. Thampy, Communist Party Office, Trivandrum.

2. 'The Madras Government have issued an order externing the Rev. R.R. Keithahn' from the Madras Province for carrying on dangerous propaganda among the students. The order is under service.

3. 'The secrecy of the source of this information should be carefully preserved.

Yours sincerely

Signed

Sachinottama

Sir C.P. Ramaswami Aiyer, KCSI, KCIE,
Dewan of Travancore.

Enclosure

Copy of letter dated 27.10.43 from (Name not legible) Communist Party of India, Tamil Nad Committee, Madras to Comrade A.K. Thampy, Communist Party Office, Trivandrum.

Dear Comrade,

Your letter of 22.10.43. We are glad to inform you that Comrade Sattanath Karayalar is an

old student worker since last March, he was acting as party unit Secretary at Tenkasi and Tinnevely Dt. He is a very good comrade and you can trust him.

How is your work in Travancore? Have you created a basis at Trivandrum for future work. Please send a factual report regarding our position in the Student front in Travancore. It is reported that Rev. Keithan is going to Travancore to organise the N.S.O. (National Student Organisation). Please take care.

Comrade Punnoose had been here during the 1st week of October. He had promised to send some materials regarding the food situation in Travancore to enable us to organise an agitation in Madras about the worsening situation in the States. If you happen to meet him please remind this to him. We are going ahead with our work. Today we have got 1,500 inside the M.S.O.¹ Ten functioning college committees have been set up. On all the important questions the initiative is in our hands. The M.S.O. conference will be held in the month of January. Before that we hope to increase the membership with 3000.

How is our comrade K.C. George?. Please convey my greetings to all comrades.

Enclosure II

Submitted

Herewith an extract from the proceedings of the meeting of Frontier Special Branch Officers held at Coimbatore on 20-10-1943.

Ag. Inspector General of Police

Sachivottama

Sir C.P. Ramaswami Iyer, K.C.S.I., K.C.I.E., L.I.D.
Dewan of Travancore.

Extract

The Mysore State authorities are contemplating to extern Rev. R.R. Keithahn from the State. His friends, G. Ramachandran² of Travancore and S.K. George are reported to be active among the students of Mysore State. The activities of these two men in British limits require close watch. S.I.s have been instructed in the matter.

'Desabhimani' the organ of the Kerala Communist Party is said to be largely in circulation among the Malayalam Sepoys stationed at Bangalore. It may be noted that in Kanarese speaking place like Mysore State, this Malayalam journal is being received in large quantities by local news agents. It is likely that N.L. Upadyaya, a Communist of South Kanara, who is now staying in Bangalore might be responsible for this. His activities as well as that of other Communists among the Malayalam Sepoys deserve close watch. The journal, the Inspector Kottavam says, is banned both in Travancore and Cochin State

8th November 1943.

D. Dis No. 661/43/C.S.

Dewan's Reply to the Resident

My dear Mr Todd,

Please refer to your secret D.C. letter No. C3-3288/43 dated the 4th November 1943.

The Rev. R.R. Keithahn is generally known to be a sincere Christian and an effective social worker but he has very pronounced leftist views and, notwithstanding his personal character, his influence over young men is of a subversive character.

A.K. Thampi alias A. Kurian is a Christian lad, son of Mr A. Abraham, a retired First Class Magistrate. He was reported to have been at Bangalore for some time learning Theology under Rev. Keithahn. The present letter forwarded by you, however, shows that Rev. Keithahn is interested in the National Student Organisation and that A.K. Thampi, being a communist, is warned against such organisation work. Reverend Keithahn is, therefore, now in a different camp.

There are within the State, a few communists among whom are K.C. George, P.T. Punnoose, Sattanatha Karayalar and Ponnera S. Sreedhar who are trying to organise communist 'cells'. Of them Sreedhar has been proceeded against under the Defence of Travancore Rules and is now under detention. The present activity among the students is subdivided into two groups, one following the Congress creed of non-violence and the doctrines associated with Gandhiji, while the other emulates the example of the U.S.S.R. Very violent controversy is taking place all over India between the two groups, the former dealing mainly with Indian politics and the latter with what is termed internationalism. Both, in spite of all outward talk, are united in their opposition to the British Government generally and the Indian States in particular, and both these groups have to be scrutinised carefully. Mr A.K. Pillai who has had a great reception in Delhi and Bombay and received special assistance from some high official personages in Delhi has played a significant part in student's movements in Madras and Malabar and one of the results of his mission to England will be to encourage subversive student movements in India. Unfortunately these aspects appear to have been ignored in Delhi.

Yours sincerely,

Signed
(Dewan)

H.J. Todd Esquire,
Resident for the Madras States

M.S.O. Madras Student's Organisation.



78: District Magistrate, Chittoor to the Government of Madras

Govt. of Madras Pub. (Gen.) Dept. 1943 – File G.O. No. 1218
[TNA]

Office of the District Magistrate
Chittoor, dated 25-11-43.
C.M.P.39/43.

From
A.R.C. Westlake, Esq., C.I.E., I.C.S.,
District Magistrate, Chittoor.

To
The Secretary to Government,
Public (General) Department,
Fort St. George, Madras.

Books and Publications – Communist Literature – Confiscation.

Sir,

Ref: D.O. No. 56644-1 (Confdl) dt 19.11.43¹ of the Under Secretary to the Government,
Public (General) Department, Madras. .

The following books, sent by the District Superintendent of Police, Chittoor for confiscation,
are sent herewith by Registered Post (*marked confidential*).

- (1) Marxism and Modern Thought.
- (2) Modern Imperialism in India—India To-day series.
- (3) Capitalism, Communism and the Transition.
- (4) Left Wing Communism by Nikolai Lenin.
- (5) Dialectical Materialism by V. Adoratsky
- (6) Karl Marx—The Civil War in France, and
- (7) Communist Manifesto by Marx and Engels.

Please acknowledge receipt.

For District Magistrate

1. Not printed.



79

Supdt. of Police to the Government of Madras

Govt. of Madras Pub. (Gen.) Dept. 1943 - File G.O. No. 1218

[TNA]

Confidential.

Special Branch, C.I.D.,
Mylapore,

Madras, 23rd December 1943.

No. 8562/c.

My dear Govindan Nair,

Reference your D.O. No. S/3259A-1/43, Public Dept. dated the 11th December¹ 1943 regarding Communist Literature.

The Director, Intelligence Bureau, New Delhi, in his circular memorandum No. 30/Int/43 dated 13.2.43² to all provincial Special Branches stated that publications already circularised by him as objectionable under the General Communist notification should continue to be withheld under notification No. 3 dated 21.1.43.³ In the same circular he said that the examination of hitherto condemned literature was being carried out in his office and that amendments to existing lists would be issued from time to time. We have not received any amendments so far as regards Nos 1 to 3 of the books mentioned in your letter which were among those condemned by the Director, Intelligence Bureau, and so it must be presumed that the books are to be treated as prohibited literature.

Nos 1 and 3 are specified in the lists of publications notified by the Director, Intelligence Bureau, as coming under the General Communist Notification, and communicated to this Branch in their circular memorandum No. 35/Int/30 dated 14.4.38 and 32/Int/38 dated 18-8-38, No. 2 is a reproduction of a part of the book 'India To-day' which has been notified by the Govt. of India as a prohibited publication in their No. 60-Customs dated 30.11.40.

I told the Dist. Supdt. of police, Chittoor that Nos 1 to 3 were prohibited under notification No. 3 dated 21.1.43³ of the Govt. of India Finance Dept., and that the Collector of the District by virtue of the powers vested in him under section 8 of the Sea Customs Act (No. VIII of 1878) is empowered to take the action required under section 167 (8) of the same Act. Also that books Nos 4 to 7 appeared to be reprints of the original prohibited publications, printed in Calcutta and that action against them may be dropped. It is not known why the Dist. Supdt. of police suggested to the Collector that they should be confiscated.

Yours sincerely

(W.F.A. Hamilton)

Supdt. of Police, S.B., C.I.D.

P. Govindan Nair, Esq., I.C.S.,
Under Secretary to Govt., Public Dept., Madras.
B.D.R. 23.12.43.

¹, ² and ³. Not printed.

⁴ See Doc. 78.

80 Sahajanand Saraswati to Bankim Mukherji

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. 511/44
[Bengal State Archives]

Copy of an English letter of 5.1.44 bearing the postal seal of issue Bihta dated illegible

From
Swami Sahajanand Saraswati,
Shri Sitaram Ashram, Bihta El Rv., Patna.

To
Com. Bankim Mukherjee,
President,
I.K.S., 249, Bowbazar St., Calcutta.

Bankim Babu,

There are in all 5 enrollment forms before me that have been received from Bihar, Gujarat, Bengal, Andhra and Bihar so far. The former two have on them printed intact the object of the A.I.K.S.¹ But the latter three have none of them. I have got two forms from Bihar, one, perhaps of last year and the other of this year, as it is of a very small size, because perhaps of the dearth of paper now. But while this has no object printed on it at all; the former has one which was adopted at Niyamatpur in 1937 and amended later on in 1938. Some such is the case with the Bengal form also, while the Andhra form merely say, 'I accept the aims and object of the A.P.R.A.² and pay one anna etc.' But it has on it neither the A.I.K.S. object nor the A.P.R.A. object printed intact or even in part. At the same time, the A.P.R.A. object, as given in its constitution, is quite different from that of the A.I.K.S. So how can I accept the membership of all the three provinces this year? In fact I have already informed the Andhra Comrades of my decision. But I had never thought that almost all the provinces would go that way. Now after the receipt of their forms I am astonished and downhearted too. When I wrote the letter to you inviting your opinion on it if and when such contingency arose, I had not before me all these forms except one from Andhra of which too I had no opinion formed by then, as I had to pursue the Andhra Constitution carefully which I did later on. I fear other forms too, which I have not received so far, are such. In the circumstances unless I get them and find all-right, how can I accept their quotas?

Comradely yours,

Swami Sahajanand Swami,
Gen. Secy.

1 A.I.K.S. — All India Kisan Sabha

2 A.P.R.A. Andhra Pradesh Ryots Association.

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Sahajanand Saraswati to Bankim Mukherji

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. 511/44
[Bengal State Archives]

Calcutta Police General Diary Book

Police Section,
Patrol out-post.

(Original)

Copy of an English (typed) letter dt 9.1.44 intercepted at Bowbazar P.O. on 11.1.44 bearing the postal seal of issue illegible. From Swami Sahajanand Saraswati, A.I.K.S. Camp—Jehanabad (Gaya) to Com. Bankim Mukherji, President, A.I.K.S. 249, Bowbazar St., Calcutta.

Dear Bankim Babu,

Hope you have got the copy of the letter sent by the Andhra Comrades on 4th Jan. 44. In reply to mine of the 29th Dec. 43, and will also have noted that the same is on behalf of the office bearers (Executive) of the A.P.R.A. You have received, let me hope also the letter of the same date written by them to all the members of the C.K.C. Now do you still think that there is any meeting ground between myself and others — Do I belong to that category? Please do peruse the letter carefully. I could quite understand a letter written in really a repenting mood, feeling the seriousness of the major basic deviation from the articles of our constitution. They have flouted the basic thing in our Constitution and yet they call all these mere minor technical irregularities. If these are minor and technical irregularities, what are the major and basic ones please? The letter repeats it, 'adnauseam'. They are out, as if, to teach me the Constitution of A.I.K.S. with an iron rod of perhaps their majority in the C.K.C. to which they rush often against me. With regard to the repeated changes of the dates I had written a long letter giving the whole thing and yet they rushed to the C.K.C. members over my head. And they repeat the same thing now only with this difficulties that this time their remarks simply add insult to the injury. Perhaps they think that I am in league with the Ranga group! But the fact is that I had almost forgotten that group. They call my letter in question as a bolt from the blue, but never repent for their callous—indifference and deliberate, yes, deliberate negligence. Just on the eve of printing membership forms Comrade Prasada Rao writes a letter to me for my advice and says that he will have printed on these forms the object of the Kisan Sabha. Yes, of the Kisan — Sabha and not of the A.P.R.A.

I doubt if he ever cared and waited for my reply. He demanded just after Bhakama, full 80 copies of our amended Constitution, certainly not to worship them just like Granth Sahib but to peruse them and translate the Constitution into action. I sent more copies promptly and the result is obvious. After getting more or less five months for the perusal of that Constitution they pass their provincial Constitution on 12.9.43 which has, as if, no relation on all basic points with our Constitution. But they do not think it proper and necessary to invite the opinion of the Central Office on the same before getting the same ratified after two full months. And yet I stab them in the back. They stab and shoot the Kisan Sabha in the back, in the front and all over and yet have the hardihood to say that I disrupt the Sabha. Perhaps who-so-ever does not ditto

to the every action of the C.P. Wallah, excuse me please, is a disrupter? They have thrown a challenge knowing full well that I can not accept it. But these insulting and irritating remarks will not do. I quite appreciate your remarks in your letter of the 3rd on these very questions as you rightly apprehend such mistakes and deviations and so want to deal with them otherwise. But they will do nothing of the kind. I may tell you one thing here. In 1940 our Annual Session was to be held in the same Andhra at Palasa and yet comrade Ranga had not paid his membership quota. Do you know how I proceeded. I threatened to disaffiliate the A.P.R.A. If he did not pay while yet there was time and for this even Indulaljee got angry at me and blamed me for being too hard and ruthless. So this is not a new thing for me. As I feel much mental pain and torture and anguish, I am unable to restrain my pen. You will please therefore excuse me for all this. Besides, I hate the policy of speaking with one's tongue in one's cheek. Hence this plain writing. All the same these lines are a result of a mature consideration over all these things.

With love and regards,

Sincerely yours,

Swami Sahajanand Saraswati

Submitted.

Signed, 11/1/44

82: 'Communist Party's appeal for funds'

File No. 7/23/43 - Home Poll (I)

[NAI]

(Note in Intelligence Bureau)

The attached leaflet, headed 'Communist Party appeals for funds', issued by the Bombay Committee of the Communist Party of India, is forwarded to the Home Department for information and favour of return.

G.C. Ryan.

Assistant Director. (R).

12.1.1944.

Home Department (Mr Olver).

D.I.S. U.C. No. 2/Bol/44, dated 12th Jan. 1944.

Information. A decided pro-Congress note, perhaps not unnatural since its money they are after, but undesirable nevertheless.

S.J.L. Olver,
12.1.44.

V. Sahay,
13.1.44.

R. Tottenham.
13.1.44.

D.I.B.

H.D. u/o No. D 219/44 – Poll (I) dt/19.1.44.

Enclosure

Communist Party Appeals for Funds

Patriots and citizens of Bombay,

The first Congress of the Communist Party addressed an appeal to all patriots for a five-lakh fighting Fund. Bombay Committee of the Communist Party appeals to you all to contribute your quota and raise Rs 30,000 as a part of this national fund.

Why should every patriot contribute to the funds of the Party?

Because the Communist Party is a patriotic organisation working for the freedom of our country. It fights for the release of national leaders. It works to end the deadlock, defeat the bureaucracy and establish a National Government in India. The Communist Party stands and strives for Congress League unity, as the only sanction to win National Government and freedom.

The Communist Party advocate self-determination for Muslim Nationalities as a just and democratic right, keeping India united.

The Party stands for control of prices, rationing, cheap food for all – against the hoarders and profiteers. It has been the one Party whose voice has been raised persistently against the bureaucratic bungling, against the hoarders and profiteers and for equal distribution of food.

The Party uses all its influence with the Kisans to grow more food to feed our people, to market all surplus grain, not to sell to private hoarders but to authorised agents.

In the Industrial areas the Party while fighting for better conditions for workers, for adequate dearness allowance, etc., continually organises the workers to keep production going, to produce more cloth, more coal, more iron etc., so that the needs of our countrymen are met, so that they get cheap cloth and cheap coal. That is why the Party has set its face against strikes which would hinder production. Under the lead of the Party the textile workers of Bombay sacrificed their common holiday on Sunday to save electricity, agreed to take it on different days of the week and thus measured enough supply of cloth for a complete year to no less than 25 lakhs of people. By this arrangement, the Party saved 34,000 workers from being unemployed, 4,000 tons of coal being saved, 200 wagons being released for transport.

The Party persistently fights for national defence against Jap attack, a task neglected by all parties. The Party organises people all over the country to fight the Jap borders in spite of the bureaucracy. It regards national defence as the supreme task before every son and daughter of the land.

Throughout the last 18 months, since the day the Government attacked the Congress, the Party has protected the fair name of the National Congress against official slander.

The Party persistently agitated for the release of national leaders and all Congressmen, at the same time it appealed to all to unite and defend the country.

It persistently worked for removing all misunderstanding and suspicion between the Congress and the League.

It exposed bureaucratic propaganda against the Congress.

From the beginning when patriots were being misled into sabotage, the Party fought against it.

Slanders against the Party now stand exposed. Sabotage stands discredited and unmasked

as inimical to the interests of the nation. Smt Sarojini Naidu has repudiated those who advocated such things in the name of the Congress.

In the last 19 months, the Communist Party aided by a growing number of patriots has battled for people's food, unearthed stocks, demanded and fought for control and rationing. It fought the Congress Socialists who were organising food riots.

Long before grim tragedy of Bengal woke up the people, members of the Party boldly came forward to fight for people's food. They were the first to open relief kitchens in Bengal, they were the first to agitate for all Parties' Unity to save Bengal. They were the first to point out their accusing finger at the hoarders and unearth the hidden stocks. Thousands of them today are working in the relief kitchens never deserting their posts even when they themselves are all through starvation. Sons and daughters of Kisans, workers, middle class — all are working themselves to death.

Brothers and sisters of Bombay, this is what the Communist Party is doing. This great patriotic party of the people appeals to you to contribute to the Rs 30,000 Party Fighting Fund and thus enable the Party organisation in Bombay to carry on its patriotic activities successfully so that our country may be saved.

Congressmen

We appeal to you to contribute every pie you can for the Party Fighting Fund because the Communist Party is a patriotic Party, because it champions the cause of national freedom, national unity, because it works for the release of Congress leaders and for National Government for defence of our country and for the freedom of our people. It has in its ranks hundreds of patriots who have sacrificed everything in the service of the National Congress and our people.

League Patriots

Contribute every pie you can to the Party Fighting Fund, because the Party stands for the freedom of India, for self-determination to Muslims, for Congress-League unity to secure National Government etc.

Patriots All

Your contribution to the Party Fund will be the evidence of your willingness to sacrifice a little in the interest of all what you hold dear:

- The release of leaders.
- The freedom and defence of our country.
- Food for our people.

Pay all that you can help the Party to organise the people and rally them behind the only patriotic policy for our people today. A strong Communist Party will mean a stronger and a more united Indian people, closer Congress — League unity, nearer National Government.



83: Bankim Mukherji to Sahajanand Saraswati

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. 511/44
[Bengal State Archives]

Calcutta Police General Diary Book

(Duplicate)

Police Section

Patrol out-post

Date and hour

Copy of our Eng. typed letter dated 12-1-44 at Bow-bazar P.O. on 14/1/44 from Bankim Mukherji, President, All India Kisan Sabha, 249, Bow-bazar Dt., Calcutta to Swami Sahajanand Saraswati, Gen. Secretary, A.I.K.S. Shri Sitaram Ashram, P.O. — Bihta, Patna.

Dear Swamiji,

I received your wire dated 8th inst. and the letters dated 5th¹ & 7th January.² The telegram was received after Prasad Rao had left for Bihta.

You must have received my telegram despatched yesterday. What you have said, in your letters regarding the irregularity of membership forms of most of the P.K.S.'s³ as well as the non-acceptance of their membership and quota money needs being discussed by the C.K.C.⁴ without delay and before the last date for their receipt by you expires. You also said in your telegram that I might call its meeting.

Accordingly, I issued a telegraphic notice to the C.K.C. members in the provinces that the meeting is to be held at Patna on 20th January. A letter followed explaining the notice.

Patna was selected as the venue because I thought that would make it convenient for you to attend the meeting which is to be held at a time when it is necessary for you not to be far away from the A.I.K.S. office. Bihta was not selected as I had no time to consult you about its suitability.

As for the sugar cane question, I shall discuss the matter with you when we meet. In the meantime, I am sending by wire a modification of my suggestions to Sir J.P. Srivastava as advised by you. Enclosed, please, Find copy of the message.

Yours sincerely,

Greetings.

Bankim Mukherji
President, A.I.K.S.

Enclosed one copy of wire, sent to Sir Srivastava.

Express telegram copy to Sir J.P. Srivastava, Central Secretariat, New Delhi dated 13.1.43.

I find from discussion with Bihar Kisan leaders proposed levy on guru producers and

commandeering cane in mill areas not acceptable to Canegrowers and impossible to implement. Please modify enclosure of my letter 30th December accordingly.

Bankim Mukherji,
President, A.I.K.S.

- 1. Doc 80.
2. Not printed.
3. Provincial Kisan Sabha.
4. Central Kisan Council.

84: Official Notings on the arrest of Ring Leaders of the R.I.A.S.C. Mutiny in Egypt¹ (extracts)

File No. 44/15/44 – Home Poll (I)
[NAL]

Home Department

Political (I)

Subject: Communication of the grounds of detention to the R.I.A.S.C. personnel and review of their cases.

The following ring leaders of the R.I.A.S.C. mutiny in Egypt are at present confined in the Indore Jail.

- | | |
|------------------------|-------------------|
| 1. Waryam Singh. | 6. Bagh Ali Khan. |
| 2. Sadhu Singh. | 7. Siraj-ud-Din. |
| 3. Harnam Singh Sodhi. | 8. Kabul Singh. |
| 4. Zafar Ali. | 9. Partap Singh. |
| 5. Gurbaksh Singh. | 10. Teja Singh. |

I place on the file a draft communication which will I think serve in the case of each of these ten men. One could also refer to contacts with the Kirti Communist Party and possibly to other individual subversive activities. I have not done so since the material on the files below does not show very clearly whether all these men were Kirti contacts and what other individual subversive activity they indulged in. D.I.B. should see for comments. Would he indicate any individual additions which he thinks should be made to the draft communications?

S.J.L. Olver, 21.1.44.

D.I.B.

H.D. u/o No. 44/11/44 – Poll (I) dt 21.1.44

Intelligence Bureau, Home Dept.

Seen, thanks. We do not think any individual additions are necessary and it is suggested that the notice to each of these 10 men should issue as in the draft. We have no special information

which could usefully be included in any of the notices and, as mentioned by us recently on a similar case, we feel it would be unnecessary and perhaps unwise to add anything regarding the Communists or Kirtis, especially as the conduct of these persons as soldiers has resulted in their detention.

G.A.J. Boon, 7.2.44.

Home Deptt.

H.I.B. u/o No. 32/A.9/42, dt 7.2.44

S.J.L. Olver, 9.2.44.

I have suggested an addition in pencil.

V. Sahay, 10.2.44.

If we say they took 'An active part', the obvious answer will be that they should have been prosecuted. I should prepare the wording as revised by D.S. and myself.

R. Tottenham, 10.2.44.

Harnam Singh Sodhi, one of the security prisoner in this batch, is suffering from Tuberculosis and orders have been issued for his transfer to the Sultanpur jail in the U.P. for treatment. We have, however, received no information yet whether he has actually gone to Sultanpore. A para 2 has been added to the D.F.A. to cover his case and a copy of the D.F.A. may be endorsed to the Govt. of U.P. for information. For approval.

S.J.L. Olver, 10.2.44.

A.N.L., 10.2.44.

Notice under section 7 of the Restriction and detention ordinance 1944 (III of 1944)¹

In pursuance of section 7 of Ordinance No. III of 1944, you Waryam Singh are informed that the grounds for your detention were that you were concerned in fomenting a mutiny which occurred in January, 1940 amongst R.I.A.S.C. personnel serving with the 4th Indian Division in Egypt and Government were satisfied that if not detained you would spread disaffection and thereby hinder the successful prosecution of the war.

2. You are informed that you have a right to make a representation in writing against the order under which you are detained. If you wish to make such a representation, you should address it to the undersigned and forward it through the Superintendent of the jail as soon as possible.

(R. Tottenham).

Additional Secretary to the Govt. of India.

Home Department

New Delhi, the 12th Feb. 1944

¹ More details about R.I.A.S.C. mutiny are in Chapter XV (Doc. 1, 36, 37, 38, 44 and 47).

² Such a communication was sent to all the other 9 leaders.

85: D.I.G. of Police to the Government of Bengal (appointment to A.R.P.)

Govt. of Bengal (Home) File No. 44/44
[Bengal State Archives]

Intelligence Branch, C.I.D.
13, Lord Sinha Road,
Calcutta, the 18th January 1944.
No. 2097
110J - 43 (B)

To
A.E. Porter Esq., C.I.E., I.C.S.
Addl. Secretary to the Govt. of Bengal,
Home Department.

Dear Mr Porter,

The verification to 11 of Narendra Prasad Ray/Jitendra Nath of Gabkhana, Jhalakati, Bakarganj, a candidate for employment in the A.R.P. service at Barisal, was returned to the District Magistrate, Bakarganj under this office letter No. 29528/110J - 43(B) dated 27.9.43, with the remark that he was unsuitable for employment as he was reported, on reliable authority, during the period 1931-42 to have been a member of terrorist party and to have later identified himself with C.P.I. activities.

The District Magistrate, Bakarganj however is reluctant to discharge the man (1) because he, is the son of a Sub-Dy. Collector and (2) he is reported to be one of the best workers in the A.R.P. In my opinion the reasons advocated by the District Magistrate are not sufficient to warrant the man's retention in service (1) for his Sub-Dy. Collector father could not keep him away from subversive activities and (2) it is not known to what severe test the Barisal A.R.P. personnel were put. I therefore recommend that the District Magistrate be requested to discharge the man.

In this connection I would point out that the action of the District Magistrate is not in accordance with the instructions contained in G.O. No. 826(1)(35) P.S. dated 8.4.43.

Yours sincerely

For Deputy Inspector-General of Police, I.B

JMR/HB.
18.1.44.



86: Extracts from Fortnightly Report from Bombay for the first half January 1944

File No. 7/23/43 – Home Poll (I)
[NAI]

Bombay

There is some evidence that the influence of the Communist party is now rather on the decline, at any rate temporarily. Their uninterrupted advocacy of Congress-League Unity seems to have irritated both the League and the Congress, but their most notable decline is probably among the students among whom the anti-Communist pro-Congress section appears to be getting the upper hand. At a session of the Maharashtra Young Literary Conference held at Poona on the 8th and 9th January, the President, Anant Kanekar, condemned Indian Communists as political renegades and characterised them as fifth columnists.

87: Official Notings on release of S.V. Ghate (dt 21.1.1944–1.2.1944) (extracts)

File No. 7/23/44 – Home Poll (I)
[NAI]

My impression was that there had been subsequent references to the question of releasing Ghate after those quoted above.¹ They have not been traced however and I do not wish to delay these papers further.

2. We should first obtain D.I.B.S.'s views.

(S.J.L. Olver).
Under Secretary.

D.I.B. (by name).

H.D. u/o No. 7/23/43 – Poll (I), dt 21/24.1.44.

We have nothing to urge against Ghates' release.

G.C. Ryan
31.1.44

Home Dept. (Mr Olver)

Addl. Secy. may see. This should also solve the question of Communicating the 'grounds' to him.

V. Sahay 1/2/

Addl. Secy.

Yes. I submitted that case to HM today and he should therefore see. I don't know that it is a particularly good moment to release Ghaté. The C.P.I. seem to be getting more rather than less obstreperous. On the other hand, I have never felt that these were very strong grounds for keeping him in when the others are out.

R. Tottenham, 1.2.43

Would Addl. Secy. please remind me of the reasons for Ghaté's non-release in June 1942? I don't think on notes this point are in the file.

R.M. Maxwell

1/2

Addl. Secy.

Reference to earlier notes on S.V. Ghaté - Not printed

88: Communist Propaganda

File No 7 23/43 - Home Poll (I)

[NAI]

Daily Digest.

22.1.444.

Communist Propaganda

Communist Headquarters in Bombay have circulated to all Provincial committees of the party a model speech for party meeting on Independence Day, to which non-party speakers are to be invited and at which the Congress, Muslim League and Communist Party flags are to be flown. The following are some extracts from the speech:

Independence Day this year comes at a time when utter extinction faces Bengal, the land which gave us our Renaissance and where was born our national movement. Five million Bengalis have already been wiped out by the famine, which started there over 6 months ago. The bureaucracy, out to hide the bankruptcy of its Indian policy from the world at large, has been saying for the last two months that the famine in Bengal is over. Just the opposite is the truth. 'Malaria, small-pox, dropsy, typhoid' a host of epidemics have come in the wake of starvation. . . . The entire social, economic and family life of Bengal has cracked up all round . . . In the towns and villages, an army of helpless women and children deserted by their destitute menfolk is left. Mothers are selling their children and women are offering themselves up to prostitution, as the only way of getting a meal a day . . . Which Indian patriot can remain unmoved by Bengal's plight on this Independence Day? How can independence come to the rest of us in India if we allow Bengal, the cradle of our very national movement, to die in this manner in front of us? What Bengal's fate is today shall be our fate tomorrow in this very province unless we save Bengal . . . The same factors that led Bengal to this tragedy are there among us too the same corrupt and incompetent bureaucracy the same hoarders and profiteers who coin fat profits

for themselves out of people's food and people's medicine . . . There can be no counter-offensive from India to throw back the Japs from Burma as long as this famine lasts and spreads; and not only Bengal, but no part of western India is secure from Jap raids and Jap thrusts so long as Burma and Malaya are not freed from Jap occupation. Nearly 25 years back six hundred Indians were shot in the Jalianwalla Bagh massacre, and the entire nation-Hindu and Muslim alike—leapt to its feet like one man. Today, five million are, already dead; the whole of Bengal is dying; Bengal's fate is spreading to other provinces, and yet the nation looks on helplessly as if nothing has happened. What is the source of this paralysis of a whole nation? . . . There is but one reason. In the earlier years, we marched from victory to victory because we never forgot the lesson of unity . . . A regime, condemned by world opinion today still continues to rule over us just because it is not confronted with a united front of national forces. The bureaucracy realises, as nobody else does, that the release of national leaders will spell the doom of its regime, it knows that nothing can prevent national unity once Gandhi and Nehru are out to unite the people and lead the battle of India's defence . . . The bureaucracy cannot fight corruption because it is linked with the hoarders as is inevitable in a bureaucratic administrative apparatus, which has no contact with the people and was built not to serve, but to exploit and suppress the people . . . Congressmen and Muslim Leaguers have to come together and join hands, if Bengal is to be saved, if the hoarder is to be fought and the common people saved from famine. In this joint service of the people will be broken all barriers of natural distrust and suspicion . . . Bengal's agony is also our biggest opportunity. Unity to save Bengal is the door towards release of the leaders and National Government. Never did the bankruptcy of the imperialist bureaucracy and of its policy in India stand so starkly revealed before the peoples of the world as over the issue of the Bengal famine . . . The so called 'Wavell Plan' of trying to solve the famine by purely 'administrative measures' by passing the political issue is their last, their last card and it is being played out in Bengal today . . .

The following are some extracts from a leaflet entitled 'Independence Day 1944 Manifesto of the Communist Party of India' which is being printed in Bombay in English, Hindi, Marathi, Gujarati and Urdu. Provincial committees have been directed to have it translated into their local languages:

Independence Day this year falls in the midst of the biggest disaster that has overtaken our country. Bengal, the cradle of our National movement, has become one vast graveyard—National disunity has meant millions of deaths; it has meant destitution and famine all round. It is today the only passport of the present regime to rule over our land as it likes. A regime condemned by world opinion, a regime which had started tottering long before the war, rides roughshod over us just because it is not confronted by a united front of our national forces. Encouraged by disunity in its arrogant denial of power, the bureaucracy imprisoned the national leaders and unleashed the worst famine in the history of the country. It refused to release them even when their release alone would have saved millions of lives in Bengal. It refused to release the Mahatma despite world opinion. It repressed the Congress and insults the League. It has denied power to both. Deadlock has been its one watchword, keep the jail gates shut has been its strategy . . . Every day of deadlock means destitution, death, hunger, famine and threat of invasion to our people; deadlock constitutes the last outpost of slavery, maintained only because of disunity in the nation's ranks. Every Muslim voice raised in favour of release of national leaders is a big blow against the bureaucracy and for freedom and power. Every Congress voice raised for self-determination to Muslim nationalities hastens national unity, and the defeat of the present regime . . . And yet a well meaning and honest Congressmen in their utter despair, are once more advocating the suicidal path of satyagraha and no-tax campaign, in the name of keeping on the struggle . . . To play with Satyagraha and no tax is to create riots, and aid the hoarder in starving our people to death. It is the same path of disruption which our nation was provoked into following by the imperialist repression of August, 1942 . . . What do the Congress Socialists, the Fifth Columnist

traitors advocate? . . . As Jai Prakash Narain has made it clear they pin their hopes on a Japanese invasion. They are, therefore, afraid that with unity in national ranks, and with the release of leaders, their policy of relying on Japan will stand exposed; it will be denounced by Nehru as rank treachery . . . Don't believe the imperialist propaganda that Japan represents no danger. On the other hand, famine and epidemics, a devitalised and destitute people, constitute the biggest invitation to say aggressor. The danger of aggression, of vile attack, increases. The aggressor is bombing our cities, and sending hundreds to death . . . The progressive forces of the people of the world range themselves on our side. The great labour movements of Britain and America fully support our demand for release of our leaders, for National Government and national freedom. The labour organisations in Britain expose the imperialist lies about the Congress, about India and incessantly campaign for Indian freedom and stand in a common front with us against the policy of Amery and Co. The great victories of the Soviet are smashing the thrones of all tyrants and creating conditions for the equality of nations and freedom for all . . .

1. Doc. 96.

89: Supdt. of Police, Madras to Dy. Commissioner of Police, Calcutta

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. 511/44
[Bengal State Archives]

Secret
Special Branch, C.I.D.,
Mylapore,
Madras, 24th January 1944.

My dear Barnes,

Please refer to your memorandum No. 685/SK.511 of the 14th instant.¹

Prasada Rao is *Nanduri Prasada Rao* of Arugelanu, Veeravalli, Krishna district. He is an active and prominent communist member of the Andhra Provincial Communist Party. He was bound over in 1939 for fomenting, agrarian trouble and in 1941 was sent to jail for being in possession of prejudicial literature. On release from jail his movements were restricted but the order was cancelled when the ban on the Communist Party was raised.

Yours sincerely,
(W.F.A. Hamilton)
Supdt. of Police, S.B., C.I.D.

P. Barnes, Esq., I.P.,
Dy. Commissioner of Police,
S.B. Calcutta.

1. Not printed.

90: Official Notings regarding Communist Propaganda (extracts)

File No. 7/23/43 – Home Poll (I)
[NAI]

It would be interesting to follow up the results of the Communist propaganda and see how many of the set speeches were actually delivered.

R. Tottenham
25/1.

...

(Note in the Intelligence Bureau, H.D.)

We have had no reports touching on the precise point raised by Home Department. Meetings held by the C.P.I. on 'Independence Day' were reported from Calcutta, Bombay Akola, Nagpur and Jubbulpore, but we have had no comment on the tone of the speeches and no prosecutions seems to have been launched. In other provinces, the communists were prevented from celebrating the day on any scale either by general prohibitory orders or by special orders directed to the communists themselves, but in three districts in Madras thirteen communists were arrested for defying the ban and in Calcutta four minor communist workers were arrested for taking out a small procession with a Congress flag. It is noteworthy that in many places the communists were more to the forefront than Congressmen on 'Independence Day', their meeting in the Calcutta which was held under license was the largest in the city. Nevertheless they seem to have received very little support or encouragement from Congressmen anywhere.

The 'Independence Day Manifesto' mentioned in the second part of our Digest was distributed in Bengal, Assam, Benares, Jhansi, Akola and Andhra and a few arrests were made in the U.P. in this connection. The processionists arrested in Calcutta were also attempting to distribute leaflets based on this manifesto. Incidentally, the Punjab Government forfeited a security of Rs 500 from a Lahore press which printed the communist Student's Federation 'Independence Day pledge' quoted in our Daily Digest, dated 28th January, 1944.

G.C. Ryan
Assistant Director (R).
28.2.44

Home Department (Mr Olver)
D.I.B. U.O. No. 1/Bol/44, dated Feb, 28, 1944.

1. Reference to Doc. 88 above.



91: Extracts from Fortnightly Report from Punjab for the first half of February 1944

File No. 18/2/44 – Home Poll (I)

[NAI]

3. Political – (a) *Communists*: Whether or not Communists have been influenced by increasing Akali propaganda denouncing them as atheists, they have begun to realise that their methods of tackling the Akali problem and their attitude of opposition to the Azad Punjab scheme are producing no results and it appears that they are now thinking of revising their policy towards the Akali party with a view to using the Akalis as a weapon for their own ends. This policy, if adopted, will accept the Sikh demand for self-determination and the previous Communist slogan of Congress-Muslim League unity will be expanded to include the Akalis. The Communist aim will be to make the Akali party, which they recognise as the most powerful Sikh party in the Punjab, into a strong democratic national organisation of the Sikhs and they will presumably employ their familiar methods of selecting suitable members to do propaganda and make contacts, enter the party through sympathisers and finally capture it by overthrowing the present leadership. In this last endeavour they will probably have the sympathy, if not the active assistance, of the Nagoke group and of other nationalist Sikhs who are showing signs of dissatisfaction with Master Tara Singh leadership and who are jealous of the influence of his chief lieutenant, Giani Kartar Singh.

During the fortnight Communists have been mainly preoccupied with their contest against Akalis in the Punjab Assembly bye-election at Montgomery. The initial impression was that the Communist candidate stood a good chance of winning, but later reports indicate that the Akali nominee has won by something over 1,300 votes.

92: Extracts from Fortnightly Report from Orissa for the first half of February 1944

File No. 18/2/44 – Home Poll (I)

[NAI]

The controversy over the statement issued by Sri Jagannath Misra, said to have been on behalf of several Congress members of the Legislative Assembly, still continues. Three Congress M.L.A.s, who are detained as security prisoners and who some time ago issued a statement that they are prepared to follow the policy of the Communist Party in Orissa and help the Government in solving the food problems, have now been definitely repudiated by the Headquarters of the Communist party in India. The Headquarters have also made it clear that there can be no question of persons professing allegiance to the Communist party joining the Ministerial party, and that they can only support a genuine coalition Government in which the Congress and Muslim League are represented.

Communists – Biswanath Mukherji of the Communist party in India has left Orissa after a

protracted visit. During his stay, he had discussions with Mr A.V. Thakkar and other members of the Servants of India Society on the subject of relief work and the Government's procurement plan. He was apparently deputed to Orissa to re-organise the Communist work here and direct the local Party's policy along the right lines, but information received seems to indicate that he has led the Communists into closer co-operation with the Congress. He addressed a public meeting in Cuttack district on the 4th February, at which he referred to the economic situation in Bengal and Orissa, which, he asserted, the Provincial Governments had failed to deal with adequately. He made the usual appeals for the release of the 'national political leaders' and for the unity of political parties, and informed the audience that the Congress was far from being dead or even dormant.

93: Extracts from Fortnightly Report from C.P. & Berar for the first half of February 1944

File No. 18/2/44 – Home Poll (I)
[NAI]

'The Bolshevik party of India also held a meeting under the Presidentship of Vishwanath Dube' at which demands were made for the withdrawal of the Congress resolution. The Communists present at the meeting opposed the demand and accused the Bolshevik party of being the paid agents of Government.

94: Extracts from Fortnightly Report from Madras for the first half of February 1944

File No. 18/2/44 – Home Poll (I)
[NAI]

Communists – The communists continued to make propaganda with reference to the present condition of Bengal. They are now attempting to gain popularity with the public by intensive agitation as regards Government's firewood rationing policy notably in Madras city itself and in Coimbatore district. Five communists in West Godavari are being prosecuted for violating the Independence Day ban order.



95

Official Noting by G.C. Ryan (dt 1.2.1944) (extracts)

File No. 7/23/43 - Home Poll (I)

[NAI]

Intelligence Bureau, Home Department.

Home Department may be interested in the following copy of a secret report, dated 24.1.44, received from Sind C.I.D. regarding the publication of a Calender' (copy attached) by the People's publishing House, Bombay (owned and controlled by the Central Committee of the C.P.I.) The report was addressed to the chief Secy. Govt. of Sind.

'I send herewith one of two calendars found in a registered book post packet addressed to Com. Kazi Majtaba c/o Labour Union. Office, Katcheri Road, Karachi. The sender is the Progressive Book Club Marxist Booksellers, Publishers & News Agent, Communist Headquarters, 11 McLeod Road, Lahore. The calendars are published by the Peoples Publishing House and printed at the New Age Printing Press, 190-B Khetwadi Main Road, Bombay-4.

2. The calendar bears two bust photographs of Lenin and Stalin in profile and each month's page contains foot notes on either side memorable dates. Inter alia attention is invited to the following:

- (1) Under January 26th Independence Day there is a foot note containing a part of the Independence Day pledge.
- (2) March 23rd, Execution of Bhagat Singh Sukhdev and Raj Guru (1931).
- (3) April 13th, Jallianwala Bagh Massacre (1919).
- (4) Under April there is a foot note entitled 'National Week' The 6th and 13th April must for ever remain green in India's memory' . . .
- (5) April 25th, 'withdrawal of military and police from Peshawar after refusal by Gharwali Platoons to fire on their brother Indians (1930)'.
- (6) May 10th 'Mutiny begins at Meerut (1857).

3. Since the calendar contains a part of the Independence Day pledge besides other objectionable references it is clearly a prejudicial document. The registered packet has therefore been detained by me under Rule 21, Defence of India Rules, 1939. It is suggested that action under Rule 40(1)(e) might be considered by the Government'.

(G.C. Ryan)
Assistant Director (R)

Home Department.

D.I.B. u/o No. 11/Bol/44.

1. Not printed.



96: Independence Day call from the C.P.I.¹

File No. 7/23/43 – Home Poll (I)

[NAI]

INDEPENDENCE DAY

Call to all Patriots.

Manifesto of the Central Committee of the Communist Party of India

Wipe Out the Infamy of Disunity: Pledge to Break the Deadlock

Independence Day this year falls in the midst of the biggest disaster that has overtaken our country. Bengal, the cradle of our National Movement, has become one vast graveyard. Families have been wiped out, Entire regions have been depopulated, whole villages made desolate.

Five millions of our countrymen have perished because we, their compatriots, could not rescue the food for them from the hands of the profiteers, because the hoarders withheld it, because the bureaucracy was too incompetent to procure it.

We were not able to unite our people to rescue these five millions from death, when they could have been rescued, we were not able to move the vast mass of Muslims when Gandhiji was dying inch by inch last year. Our failure to unite nearly cost us the Mahatma's life, our failure to unite has already cost us five million innocent lives in Bengal.

When we think of this, fellow-Congressmen, all of us have to hang down our heads in shame.

National disunity has meant millions of deaths; it has meant destitution and famine all round. It is to-day the only passport of the present regime to rule over land as it likes. A regime condemned by world opinion, a regime which had started its tottering long before the war, rides rough-shod over as just because it is not confronted by a united front of our national forces.

Encouraged by disunity in its arrogant denial of power, the bureaucracy imprisoned the national leaders and unleashed the worst famine in the history of the country. It refused to release them even when their release alone would have saved millions of lives in Bengal. It refused to release the Mahatma despite world opinion. It repressed the Congress and insults the League. It has denied power to both. Deadlock has been its one watchword, keeping the jail gates shut has been its strategy.

Outpost of Slavery

Completely isolated from the people, realising its weakness before any united demand, it desperately clings to deadlock, to retention of Congress leaders in jail, as the only chance of preventing our march to National Government and Freedom.

It pretends to solve the food-crisis without a political settlement; it only accentuates it and unleashes a new war epidemics, threatening to ruin the whole country; its policy saps the morale for defence and production and threatens to hold up the entire country.

In short, every day of deadlock means destitution death, hunger, famine and threat of invasion to our people, deadlock constitutes the last outpost of slavery, maintained only because of disunity in the nation's ranks.

There is no marching forward for our country unless the policy of deadlock, the policy of retaining the Congress leaders in jail is defeated; unless the leaders are released to unite our people for food and national defence.

Self-determination Means Unity

Independence Day calls upon every honest man to work for uniting our people to secure the release of leaders and defeat the bureaucracy. It calls upon every Congressman to work steadily to secure overwhelming Muslim support for the release of Mahatma Gandhi and Pandit Nehru; it bids him to inspire confidence among the Muslims that the release of leaders will lead to unity and full acceptance of their right of self-determination.

Every Muslim voice released in favour of release of national leaders is a big blow against the bureaucracy and for freedom and power. Every Congress voice released for self-determination to Muslim nationalities hastens national unity, and the defeat of the present regime.

Any other path is the path of famine, of deaths, of starvation, of succumbing to bureaucratic provocation, of rendering the country helpless before Japanese invasion.

Whither Fellow-Congressmen?

And yet a few well-meaning and honest Congressmen in their utter despair, are once more advocating the suicidal path of satyagraha and no-tax campaign in the name of keeping struggle

They turn their backs on the task of building national unity, they turn their backs upon defence against Jap invasion, they turn their eyes from the grim food situation and the massacre of thousands; they have no plan of saving people's food from the hands of the hoarder and of protecting them from the consequences of bureaucratic bungling. They do not advocate united action of Hindu and Muslims in order to save our people from hunger. Despairing of unity, they advocate satyagraha no tax.

In the earlier years satyagraha united our people against the bureaucracy and strengthened our striking power.

In the present situation, where does it lead?

Does it unite the Hindus and Muslims or does it divide them more and more! Does it enable us to defend our country, and defeat the bureaucracy's policy of deadlock! The last eighteen months show that to play with satyagraha in the present situation is to aid the bureaucracy in crushing our people, to intensify the food famine, and paralyse national defence.

To play with satyagraha and no-tax is to create riots, and aid the hoarder who is starving our people to death.

It is the same path of disruption which our nation was provoked into following by the imperialist repression of August, 1942.

Path of Traitors

Congress Patriots! When unity and release of leaders is the key to the situation what do the Congress socialists advocate!

They represent the demand for release of our national leaders as a compromise with the Government. Release of Gandhiji and Nehru, they say, will strengthen the Government and weaken the people. They propagate against Congress League unity, and to justify it they circulate the lie that the Muslim League is a tool of the British Government. They thus sow further misunderstanding between Congressmen and Muslim Leagues and strengthen despair and defeatism about unity.

Their policy aids and abets the bureaucracy. Their aim is simple. As Jai Prakash Narain has made it clear, they pin their hope on a Japanese invasion. They are therefore, afraid that with unity in national ranks, and with the release of leaders, their policy of relying on Japan will stand exposed; it will be denounced by Nehru as rank treachery; they are afraid that a united India will march to resistance against Japan and that their plans of selling the country to Japanese imperialism fail.

That is why they pose as uncompromising fighters and rave against unity, and denounce the demand for release as compromise with Government.

Against the Aggressor

Fellow-Patriots! Our nation, robbed of its leaders, is facing the gravest crisis today. On the borders of Bengal, reeling under the death-blow of famine, lurks the cowardly aggressor who has committed every kind of atrocity in China. Do not believe the imperialist propaganda that Japan represents no danger. On the other hand, famine and epidemics, a devitalised and destitute people, constitute the biggest invitation to any aggressor.

The danger of aggression of vile attack, increases, the Aggressor is bombing our cities and sending hundreds to death. That aggressor has to be unitedly resisted at all costs — to save our people.

Battle for Food

On top of this comes the internal danger of country, Famine. The shadow of death lengthens over the entire land, Famine, pestilence, epidemics — all together threaten to slay by the million, and entirely ruin our country.

Five million have already perished in Bengal for want of food. The same fate awaits every province, the whole of India, if Congressmen do not unite our people, and call upon every Hindu and Muslim to protect the bread of his family and the milk of his children.

Independence Day Calls

Congressmen! In the name of every party that has fallen in the sacred cause of independence, in the name of the five millions who perished in Bengal, the Independence Day bids you to lead the battle for food, to call upon the League to join you for the single aim of saving our families from destitution and death.

It calls upon you to embark on a joint campaign against the hoarders, against his power to send people to death, and to demand rationing, price-control and control of stocks to ensure a square meal for all.

It calls on you to see that the rich do not batten on food while the poor starve to death, that none starves because of bureaucratic bungling while there is ample food in the country.

It calls upon you to ask the peasant to sell all his surplus grain to authorised agents, and to see that the plan for control of crops, started by the Government, is not allowed to be ruined through bureaucratic incompetence but succeeds in the interests of all.

It is your responsibility to see that this years' crop does not go into the hands of the hoarders; otherwise the grim fact of Bengal will be repeated all over. Only a joint front and joint activity of the Congress and League patriots will its safety.

Towards National Government

Out of such a joint front will grow not only unity for food, but also unity for the release of

leaders, and for National Government — our irresistible sanction before which the bureaucratic resistance must crumble.

Congressmen working in the forefront of the food struggle will be the most convincing argument to secure Muslim support for the release of national leaders, the joint work in the service of our countrymen will remove Congress misunderstanding about the League and its demands. The battle for food will really become the battle for power and freedom.

Independence Day this year bids us to wipe out the infamy of disunity, which keeps the bureaucracy in power, holds the leaders in jail, and makes us helpless witnesses of millions of deaths.

It bids us to raise the banner of Congress — League unity to defeat the bureaucracy's policy of deadlock, to release the leaders, to secure food for our people and establish National Government of national defence.

No Reason for Despair

Congressmen! Shall we sit with folded hands thinking that unity is not possible when ruin and death stare us in the face!

Shall we despair of unity when 100 million Muslims are awakening to national consciousness and declare their resolve to liquidate Imperialism! Should we commit the crime of turning our back on unity when to unite is to win! Should we play with satyagraha which in the present circumstances only disrupts our ranks!

We are Winning

The progressive forces of the peoples of the world range themselves on our side.

The great labour movements of British and America fully support our demand for releases of our leaders, for national Government and national freedom. The labour organisations in Britain expose the imperialist lies about the Congress, about India and incessantly campaign for Indian freedom and stand in common front with us against the policy of Amery & Co.

The great victories of the Soviet are smashing the thrones of all tyrants and creating conditions for the equality of nations and freedom for all.

Away with despair and frustration

Forward to the irresistible unity of our people

Of the Congress and the League, for food, defence and release of leaders!

(Notes in Intelligence Bureau)

The attached copy of a leaflet, issued by the C.C., C.P.I., in connection with Independence Day, is forwarded to Home Department for information. It has been treated as a 'prejudicial document' by the Sind C.I.D. who have withheld a packet containing 100 copies, sent from Bombay, under Rule 21 of D.I.R. and have suggested to the local Govt. to forfeit it under Rule 40 (1) (e) of the Defence Rules.

2. The Independence Day Manifesto of the C.C., C.P.I. has also appeared in issue No. 30 dated 23.1.44 of the 'Peoples' War'.

(G.C. Ryan)
Assistant Director (R)

Home Department (Mr Olver)

D.I.B. U.O. No. 11/Bol/44 dated Feb. 4, 1944.

1. This 'Independence Day Call' closely follows the 'communist propaganda' (Doc. 88) — Ed.

97: Official Note on the Communists' Independence Day call

File No. 7/23/43 – Home Poll (I)
[NAI]

Home Department

I am inclined to think that action against this,¹ if taken at all, should be by an all-India order. We should I think be justified in asking Sind to hold hand until we have come to a decision and it might be worth sending them a telegram to this effect, unless of course we decide at once to pass an all-India order of proscription. I have little doubt that proscription under Defence Rule 40 (1) (e) would be fully justified.

4.2.44.
(S.J.L. Olver)

1. Refer to Doc. 96.

98: Official Notings regarding the Manifesto of the Communists¹ (dt 5.2.1944–6.2.1944)

File No. 7/23/43 – Home Poll (I)
[NAI]

I think we can safely proceed on the assumption that Provinces generally (if not including Bombay also) accept the position that a Provl. order of forfeiture under Rules 40 (1) (e) should be followed in all Provinces.

The next question is, ought we to take action ourselves (if action is considered necessary) or leave it to or suggest to Sind & Bombay to take action & inform other Provinces so that they may confiscate these papers.

There is a lot in this manifesto which suit us & I wouldn't take action here. There is no need for us however to prevent Sind from taking action if they wish to.

V. Sahay.
5.2.

Addl. Secy.

It is too late now in any case to prevent circulation of copies of the Independence Day issue of *People's War* – but if any prov. Govt. finds it necessary to prevent circulation of the leaflet and inform other Govts that they have done so, it may have some effect. I don't think it is for us to initiate action – in fact we have just told the Bombay Govt. that it is their job to

deal with the *People's War*, C.P.I. Publications – and although the language of the manifesto is certainly most intemperate and, in places, objectionable, there is some good stuff in it.

R. Tottenham
6.2.43.

1. Doc. 96.

99: Official Notings regarding release of Communist Prisoners (dt 5.2.1944–10.2.1944) (extracts)

File No. 7/23/43 – Home Poll (I)
[NAI]

Home Department

In our letter No. 7/23/43 – Poll (I) of 8th June, 1942,¹ we announced our intention to revise our policy towards the Communists, in view of their change of front, to legalise the Communist Party and to release all Central Government Communist security prisoners with the exception of Dange, Ghate, Batiwala, Ranadive, Bharadwaj and Sher Jung. These six leaders were retained in detention partly because as in one case of, for instance, Sher Jung – they had terrorist records, there was some doubt as to the genuineness of their adherence to the party line, partly as hostages since it was felt that to release all the leaders immediately would leave Government with no hold over the party; but principally of account on their greater organisational capacity, it being felt that until it was more clearly demonstrated that the new pro-war party line was genuine, the release of such proved underground organisers would be dangerous.

2. Of these six prisoners, Ranadive was released in July, 1942, it being eventually decided to include him along with the other leaders in the main release. Bhardwaj was released in January, 1943, on grounds of health. After developing tuberculosis (see serial Nos 31, 32 and 42 in File No. 7/15/42 – Poll (I). Dange and Batiwala were released in February, 1943; Batiwala's release was necessary on grounds of health and as the Bombay Government had already recommended the release of both these prisoners, this was made the occasion for releasing Dange also (see particularly serial Nos 28, 35 and 37 in File No. 7/15/42 – Poll (I).

3. There remain only Sher Jung and Ghate. In the case of the former, D.I.B. has advised against release owing to his terrorist associations and past activities and final decision has been held over pending his reply to the notice communicated under section 7 of Ordinance No. III. The latter case is now for orders.

5.2.44.
(S.J.L. Olver)

V. Sahay
7/2
Addl. Secy.

As I said before there has been some confusion between Ghate (Madras) Dange (Bombay) D.I.B. has never been strongly opposed to the release of the former – the man now in issue

— but he was always opposed to the release of Dange over which we were rather bounced by the Bombay Govt., I think.

R. Tottenham.
7/2.

Presumably Ghate is now due for a notice of the grounds of his detention under Ordinance III. I think it would be appropriate to await his representation, if any thereon deciding whether to release him.

V. Sahay
10/2

Issue the notice at once which was prepared on the other file.

R. Tottenham.
10/2/44.

1 Not printed.

100: Official Notings on Intelligence Chief Ryan's note (dt 7.2.1944–8.4.1944) (extracts)

File No. 7/23/43 – Home Poll (I)
[NAI]

Home Department

This seems a most unimaginative and unintelligent police report,¹ since on the whole the calendar and its footnotes are in no way prejudicial and it cannot be contended that the general intention or effect is likely to be prejudicial. It is I am afraid an example of the 'give a dog a bad name and hang him' attitude against the Communists which we are opposing. I do not think we can do anything about it, however, at this stage, though if Sind did issue an order under Defence Rule 40 (1) (a) we might perhaps protest mildly; I doubt whether even this would be worth it, however.

(S.J.L. Olver).
7.2.44.

D.S. (I).

The reference to the Garhwalis conduct at Peshawar & the mutiny of 1857 as events to be remembered does I think make this a prejudicial report in the strict sense, but I agree that no action by us is necessary.

V. Sahay.
7.2.

Addl. Secy.

I agree with D.S.

I am afraid the C.P.I. try to go as near the line as they can.

R. Tottenham.

7.2.

D.I.B. may see, & return these papers to us for record.

S.J.L. Olver.

Under Secretary.

8.2.44.

1. Document No. 95.

101: Official Note on U.P.'s report of Communists' celebration of Independence Day (dt 15.2.1944)

File No. 7/23/43 - Home Poll (I)

[NAI]

The U.P. report on the Communist celebration of Independence Day in that Province at page 17 of the intelligence folder below¹ may be seen. The police have as a whole — and perhaps naturally — not taken very kindly to the change of policy towards the Communists; we have recently seen police reports from Madras which exhibited perhaps a certain bias against the Communists (these reports should incidentally have been included in the intelligence folder and must be obtained and placed on that folder), and one may therefore perhaps discount a certain amount in assessing police reports on Communist activities. Nevertheless, even with this discount, I think the U.P. report, coupled with the objectionable tone of recent issues of the *People's War*, particularly of course the Independence Day issue, give cause for anxiety. I do not suggest that there is any question of a stage having been reached where reconsideration of our policy towards the Communists is called for. But I do think that the situation calls for review. I note that the last periodical survey of Communist activities from D.I.B. covered the period July — October, 1943 and I would suggest that the first step might be to ask D.I.B. whether he could let us have a further survey fairly shortly.

(S.J.L. Olver).

15.2.44.

1. Not printed.



102: Report of a meeting held on 15.2.1944 of the CPI at the Calcutta University

File No. 7/23/43 – Home Poll (I)
[NAI]

(Note in Intelligence Bureau)

Secret.

The attached copy of a secret report dated 17.2.44, received from Calcutta Special Branch, regarding a meeting held in Calcutta on 15.2.44 under the auspices of the C.P.I. to protest against the imposition of a ban on Mrs Sarojini Naidu, is forwarded to Home Department for information.

(G.C. Ryan).
Assistant Director (R).

Home Department (Mr Olver).
D.I.B. U.O. No. 3/Bol/44 – dated Feb. 25, 1944.

R. Tottenham.
26/2.

President

Arun Das Gupta
Kumud Biswas
Sadhan Gupta
Anila Debi
(Mahila Atma Raksha Samiti)
(also Present)
Jolly Mohan Kaul
Nripen Chakrabarti
Gopal Acharya
Hrishikesh Banarji
Pramode Das Gupta
Saroj Mukherji
Sushil Kunt Agrami
Suresh Basu
Subash Mukharji
Dhiren Dhar
Annada Dhar
Annada Sankar Bhattacharji
Abdur Rezak Khan
Muhammad Ismail.

At a meeting (1000 including about 39 women) held on 15.2.44 at the Calcutta University Institute with SOMNATH LAHIRI as president, the speakers condemned Imperialism for

imposing a ban on Mrs Sarojini Naidu who merely repudiated the charges against the Congress viz. that it was pro-Japanese and was responsible for acts of sabotage since 9th August, 1942, and denounced the activities of the C.S.P., F.B.,¹ and other political groups which misled the people by carrying on mischievous propaganda in the name of the Congress.

The meaning of the statement issued by Mrs Naidu had also been distorted.

Arun Das Gupta (BPSF² old) remarked that this ban on Mrs Naidu came as part of the 'Wavell plan' which could better be called a 'Wavell plot'. Unless this plot was frustrated, the country could not be saved. The problems before the country would never be solved unless and until the people achieved political freedom and power. He characterised the capitalists as 'Agents of Death' for opposing the rationing scheme.

Kumud Biswas stated that Imperialism gagged Mrs Naidu so that Mr Gandhi message and views might not be made known to the people. Imperialism had carried on repression in the country. He bitterly criticised the British Imperialism and Mr Amery, in particular for their attitude towards the Congress, for not releasing Mr Gandhi while on hunger strike and for not allowing Mr Sapru and Mr Phillips to interview him. In conclusion he remarked that the congress was not dead — it could not be suppressed by gagging Mrs Naidu or imprisoning other leaders.

Sadhan Gupta observed that the Bureaucracy had planned a conspiracy against the congress and tried to denigrate it before the eyes of the world. He appealed for national unity to end the deadlock and to carry the message of Mrs Naidu throughout the country.

Anila Debi of Mahila Atma Raksha Samiti asked the women to stand by their brothers in the fight for freedom in solving the deadlock and in ending the repressive policy of the Govt

President deplored that there was no clear-cut indication in Mrs Naidu's statement as to how the people of the country were to continue the struggle for freedom, solve the deadlock and effect Hindu — Muslim unity. He also bitterly criticised the political groups which distorted the statement of Mrs Naidu to mislead the people of the country, and tried to carry on false and mischievous propaganda against the communists. A Congress flag, a Muslim League flag and a CPI flag were displayed in the meeting.

Appropriate slogans were shouted.

N.B. No permission was obtained for the meeting and the reason is apparent in the tone of the speeches, which are decidedly more anti-Govt. than speeches generally made at CPI meetings.

1 Forward Bloc.

2 Bengal Provincial Students Federation.



103

Regarding Bolshevik Party of India

Govt. of Bengal office of D.C.P. (Sp. Br) File No. SK511/44
[Bengal State Archives]

C.147
16.2.44

140. *Bolshevik Party of India*

The Politbureau has disbanded the Bengal Committee of the Party. A secretariat has been formed with Barada Mukutmani, Amar Naskar, Mani Bishnu Chaudhuri and Dinanath Gupta. Besides these the following have been taken in the Bengal Committees.

- (1) Dinen Sen (incompletely identified) of Dacca.
- (2) Bimal Mahalanabis of Belgharia
- (3) Naresh Das Gupta

Santosh Ghosh, Nunda Basu and Khagen Ray Chaudhuri have been eliminated from this Committee, so also the candidate member Kesto Ghosh.

Promode Sen's plan is to eliminate all their opponents from the various Committees of the Party before the Congress of the Party in May next, so that they may have delegates to the Congress according to their choice and thus be able to stress their view point in the congress session. Their policy is bound to disrupt the Party. It would not be surprising if almost all the intellectual members of it will leave the Party due to the uncompromising attitude of Promode Sen and Biswanath Dubey and their group.

Bijan Banarji (mentioned in 1943 Oct. para 34), could not go to Russia. He returned to Calcutta in the 3rd week of December, 1943. He is now working in the Party Press at Kasba, 24 Parganas.

IR, 5652
17.2.44

Shishir Ray,¹ General Secretary, 64, Chittaranjan Avenue, Calcutta has sent copies of Central Circular Nos 30 and 31 (intercepted on 17.2.44) to Comrade Laxmanpure, Juno Tukugunge, House No. 10, Indore, Holkar State and several others.

Com. Laxman Pane, June-Tuko Gunge, House No. 10, Indore, Holkar State.

Com. Sukhmoy Bose, Secy. Labour Party, Calcutta Laundry, Lotijhil Muzaffarpur, Bihar.

Com. Nagendra Bhattacharya, Labour Party Office, Karim Mansion Room No. 31, P.O. Sakchi, Jamshedpur.

Mrs Sita Mukharjee, Sovan Bhavan 760, Parsi Colony, Dadar, Bombay.

Com. Umar Faruq, Vill. Malikpur, P.O. Sherpur, Dt. Hazara, N.W.F.P.

Com. Atulya Mazumdar, Sylet Labour Party, Zinda Bazar, Sylet, Assam.

In the former circular it has been stated that the session of the All India Kisan Sabha

Conference will be held on the 12th March, 1944. Those comrades who have been elected delegates to the above conference should reach Bezwada by the 8th March positively.

In the latter circular all the cells, and local District and Provincial committees have been instructed to introduce numbering on letters in their correspondences with the General Secretary or the Central Office.

1 An alternative spelling of Sisir Roy – Ed.

104

Extract from the Minutes of the meeting of the official Representatives . . . 24th & 25th January 1944 at Lucknow, in connection with the Agenda of the 4th Standing Labour Committee meeting

File No. 7/23/43 – Home Poll (I)

[NAI]

Communist Activities and Labour

Mr Brislee pointed out that some communist parties in Madras were not genuine in their professions of support for the war effort. Some Communist Union tried to create difference between employers and workers without justification and it was desirable that Government of India should issue a directive in the matter.

Mr Pedley stated a that they could not stigmatise the party as such. The communists stood openly in favour of the war effort, and it depended very much upon the individual communists in the area concerned.

Mr Mudaliar from Mysore stated that their experience of the Communists in the Kolar Gold Fields was not a happy one. The Communists showed outwardly that they were for the war effort, but in practice attempts to create a rift between employers and workers.

Mr Amin-ud-Din from the Punjab said that the Communists were genuine in the 'war effort' but they also wished to consolidate their position in the country.

Mr Hughes said that in Bengal they found the communists helpful.

(Mr Mirza of Hyderabad and Mr Gupta of Gwalior were also of the opinion that communists were generally helpful in the war effort.) [*The statement of Mr Mirza and Mr Gupta are given below under the head – Corrigendum – Ed.*]

Mr Nimbkar explained the creed and the principles of the party, and doubted the usefulness of a party avowedly based on the principles of class struggle and revolution. They were no doubt consolidating their position.

Mr Prior explained that the views of the Government of India were contained in the Home Department Circular on the subject. It was not possible for the Government of India to give any general directive; the object clearly was war production should not suffer.

Mr Brislee stated that in the circumstances they should take the slogans of the communists at their face value and act on them.

*Government of India.
Department of Labour.*

No. L.C. 2.175.

Dated New Delhi, the 12th May, 1944.

Corrigendum

Subject: *Minutes of the meeting of the official representatives held on the 24th & 25th January 1944 at Lucknow forwarded with this department No. L.C.2, dated 18th February 1944.*

Substitute the following for the sixth sub-para under the heading 'Communist activities and Labour' on para 2:

'Mr Mirza of Hyderabad stated that the Communist of Hyderabad professed that they were working for the war effort, but were in practice creating labour unrest on any small pretext.

Mr Gupta of Gwalior observed that apparently judging from their slogans, the Communists stood for increased production and thus supported the War effort'.

Under Secretary to the Government of India.

To

1. The Governments of Hyderabad, Gwalior, Mysore, Indore, Baroda and Travancore.

105:

Circular Memorandum on prohibited literature

Govt. of Madras Pub. (Gen.) Dept. 1944 -- File G.O. No. 1218

[TNA]

Secret.
Special Branch, C.I.D.,
Mylapore,
Madras, 24th February 1944.

Circular Memorandum

Prohibited Literature

Reference this office circular memorandum Nos 1488/C of the 23rd March 1943¹ and 6463/C of the 14th October,² 1943.

2. With the Supersession of the General Communist Notification No. 61 of September the 10th, 1932, by Government of India Finance Department Notification No. 3 dated 21.1.43,³ a copy of which was attached to this office circular Memorandum No. 1488/C dated 23.3.43 some misconception appears to exist in the treatment of prohibited publications, particularly in relation to literature which is disseminated in India despite the import ban.

3. The list of prohibited publications is based on instructions from the Director, Intelligence Bureau, New Delhi, who in classifying each publication considers not only its contents but

the possible effect of undue publicity if a widespread ban were to be enforced. In other words if a harmful book can effectively but unobtrusively be banned he commends this course but where publicity is inevitable he considers that it is often better to ignore a book even though its contents are objectionable.

4. Ordinarily very little publicity arises out of the confiscation of literature banned under section 19 of the Sea Customs Act as this is normally done during transmission. Literature which has escaped the Customs and postal net at ports however, gives considerable trouble, for once on sale to the public or in the possession of interested parties, seizure only aggravates publicity and spreads the book's reputation. The police have no power under the Sea Customs Act or any other substantive law to seize literature prohibited under the General Customs Notification, and the most they can do is to move the Customs authorities to seize such literature under section 178 Sea Customs Act or to have a search made, wherever it is 'secreted' under section 172 Sea Customs Act, but in practice however these devices are rarely expedient. It may be occasionally possible for the police to prevent the further circulation of objectionable books by discreetly advising well-disposed booksellers to withdraw such publications from sale, but the danger of publicity still exists and must always be considered.

5. Greater difficulties arise in regard to the republication in India of foreign literature banned under the new notification. The Sea Customs Act does not apply in this case. It has also been ruled that the notification made by the Provincial Government in January 1940 under Defence of India Rule 41 (1) (b) — vide G.O. No. 231 Public (General) dated 29-1-40 prohibiting the printing or publishing of any matter contained in any document the bringing of which into British India is prohibited under section 19 of the Sea Customs Act, is applicable only to books banned under specific notifications and not under the General Notification. The only remedy in such cases is to have recourse to other provisions of law in accordance with the circumstances of each case. It must be particularly noted that certain publications circularised as objectionable under the General Notification cannot legitimately be made the subject of a declaration or order under section 4 (1) of the Indian Press (Emergency Powers) Act, section 99 A of the Criminal Procedure Code of Defence of India Rules 40 and 41.

6. The scope of circular memo. No. 1488/C dated 23.3.43 as circumscribed by the limitations of the Sea Customs Act and by the desirability normally of minimising obtrusive action. In rare cases publicity may of course be necessary but it is impossible to lay down hard or fast criteria or to indicate now which publications are an exception to the general rule. The decision as to the treatment that should properly be given to a new publication under the Sea Customs Act read with the Office Act, rests with the Director, Intelligence Bureau and all cases of new publications must be referred to this Branch before overt action is taken.

7. This prior consultation is also required whenever any action under other laws in respect of literature mentioned in the 'Prohibited' list whether published abroad or republished in India is contemplated.

(W.F.A. Hamilton).
Suptd. of Police, S.B., C.I.D.

Press/Radio/Propaganda/Speeches.

To

The Commissioner of Police, Madras, All Dt. Suptds of Police, the Central Intelligence Officer,

Madras, the S.B.S.I., Pondicherry the Sergeants at Dhanushkodi, Tuticorin and British Cochin, & the S.E.O., Madras.

Copy to the Officer Commanding Censor Station, Madras.

- 1 Not printed.
- 2 Not printed.
- 3 Not printed — See Docs 78 & 79.

106: Extracts from a Fortnightly Report on the political situation in Bengal for the first half of February 1944

File No. 7/23/43 – Home Poll (I)
[NAI]

Intelligence Bureau
(Home Department).

Extract from the Fortnightly Report on the Political Situation in Bengal for the first half of February, 1944, received from the Central Intelligence Officer, Calcutta.

The C.P.I. continues its policy of 'obstructive co-operation'; this is very noticeable with regard to rationing. Co-operation is indicated by a welcome for the rationing system and the plea for extending its scope. Obstruction appears when it is declared that the 'foreign Government' never wanted to introduce rationing but had been forced to do so against its will due to the pressure of the workers. The workers must now demand that the rationing system should be managed by the people themselves and not by Government. Success in this would be a stepping stone to the capture of further power and finally the control of the country. If the Government wanted co-operation the national leaders should be released from jail. The C.P.I. has also been causing unrest amongst labourers, noticeably the employees of the Oriental Gas Company, by fomenting agitation for an increase in the ration unit.

The C.P.I. is now considering a fresh agitation for the release of the convicts in the Chittagong Armoury Raid case¹ and the Secretary of the Provincial C.P.I. has asked the Chittagong Branch for short biographical sketches of each of these convicts and copies of their photos.

In the field of medical relief the C.P.I. has been organising small squads of medical students to tour the districts under the leadership of Dr B.K. Basu.

For information.

(G. AHMED), 26.2.44.
Deputy Director (A).

H.D. (Mr Olver).

D.I.B. u/o No. 2/yan/44(3) Feb 28, 1944.

1. A revolutionary effort by a secret society in Chittagong in April 1930. Many of the detenus became believers in Marxism-Leninism afterwards.

107: Extracts from Fortnightly Report from Madras for the second half of February 1944

File No. 18/2/44 - Home Poll (I)

[NAI]

Communists

The Communists continue to make political capital out of the firewood situation both in Madras and in some mofussil centres. They are similarly exploiting the food situation in some place, particularly where they can combine such activity with labour agitation. To this end there have been several deputations of Communists. In the city of Madras Communists on behalf of the Mathar Sangam waited in deputation on the Collector of Madras and on the Commissioner of Civil Supplies. The local Communists in Madras organised a well attended Tamil anti-capitalist propaganda play entitled 'Kandan Kattum Vazhi'¹ on the 18th of February. In Chittoor it is reported that there is considerable communist propaganda among ryots and that their party men are acting as spokesmen of the ryots for the representation of agrarian grievances to Government.

1. 'The path that Kandan showed'.

108: Extracts from Fortnightly Report from Punjab for the second half of February 1944

File No. 18/2/44 - Home Poll (I)

[NAI]

(c) *Communists* - 'The Communists are disappointed but not discouraged at the defeat of their candidate in the Assembly bye-election and consider that the election enabled them to spread more Communist propaganda in the Montgomery district than would otherwise have been possible and to sow the seeds of a strong organisation. Their proposals (referred to in my last fortnightly report¹), which are as you knew only in an embryonic stage, for penetrating into the Akali Party with a view to overthrowing the Akali leaders and controlling the rich Gurdwara funds are a natural preliminary to their long term objective of consolidating their hold over the Sikh peasantry. Several party members are at present engaged in writing theses on the Sikh question in which they have analysed the reasons for the rise to power of the Akali Party and have put forward suggestions for undermining its authority. These have yet to be examined by the Provincial organising Committee of the Punjab Communist Party and by the Communist party of India before any policy is framed, but they are typical of the thoroughness and subtleness of the Communist approach to problems which obstruct the realisation of their bid for power. How far the Communists are likely to succeed in the face of determined Akali opposition must be a matter for speculation, but it is probably correct to say that the opportunist and communal Akali policy and the unpopular Azad Punjab scheme are losing Master Tara Singh and Giani Kartar Singh the support of many of their followers, a state of affairs which

may facilitate Communist plans. The Communist challenge to Akali supremacy has led Master Tara Singh to issue a call to Sikhs to save their Gurdwaras from atheists.

Not printed.

109: Supdt. of Police to the Under Secretary, Govt. of Madras

Govt. of Madras Pub. (Gen.) Dept. 1944 – File G.O. No. 1218
[TNA]

No. 1040/C.

Special Branch, C.I.D.,
Mylapore,
Madras, 10th March 1944.

My dear Govindan Nayar,

Reference your D.O. No. 56644-4 Public (Political) Department dated 10.1.44¹ and reminder dated 29.2.44² regarding communist literature.

The Director, Intelligence Bureau is of opinion that the books entitled 'Marxism and Modern Thought' and 'Capitalism, Communism and the Transition' are unobjectionable. He has also stated that Government of India Notification No. 60/Customs dated 30.11.40 relating to the book 'India To-day' by R.P. Dutt, was cancelled on 3.4.43. I am asking him for a copy of this notification which I have not seen. 'Modern Imperialism in India' was examined by the Intelligence Bureau recently and they hold the opinion that it does not deserve a special ban at this stage. The Director, Intelligence Bureau has ruled however, that the original book 'India To-day' and its abridged edition 'Guide to the Problem of India' should still be withheld under the Sea Customs Act. (Notification 3 of Government of India, Finance Department, dated 21.1.43).

With regard to the full list of the books which would still be classed as 'Prohibited' the Director, Intelligence Bureau has stated that they have no list of books classified as such, nor is one under contemplation, nor likely to be compiled until after the war. I enclose, however, a printed booklet² in two parts which was compiled in this office from lists of publications furnished by the Director, Intelligence Bureau from time to time. Part I contains publications which have been prohibited entry into the British India and Part II such of those publications which have been classified as unobjectionable. Originally these books were prohibited under the General Communist Notification No. 61 dated the 10th September 1932, but have since been brought under the Government of India Finance Department Notification No. 3 dated 21.1.43 which has been designed to take the place of the former notification. The books mentioned in the booklet are not exhaustive and the Director, Intelligence Bureau himself has stated that something like 95 per cent of the books which were banned by him before 1942 would now be considered unobjectionable, and that his office have neither the time nor the opportunity to undertake a wholesale re-examination – an unprofitable task – especially in view of the fact that many of these books will no longer be reaching in India.

Any alterations or amendments to the booklet based on the Director, Intelligence Bureau's instructions will be communicated to you in future.

Yours sincerely,

For (W.F.A. Hamilton)
Supdt. of Police, S.B., C.I.D.

M. Govindan Nayar, Esquire I.C.S.,
Under Secretary to Government,
Public Department, Madras.
T.A.R.

1 and 2. Not printed – See Docs 78, 79 and 105.

110. Extracts from Fortnightly Report from Bihar for the first half of March 1944

File No. 18/3/44 – Home Poll (I)
[NAI]

Communists – While the Congress will no doubt use the Communists and their programme for their own purposes, it is improbable that they will identify themselves too closely with the party. Communists in Bihar are said to be in well satisfied position and their growing popularity with the masses.

111. Extracts from Fortnightly Report from Punjab for the first half of March 1944

File No. 18/3/44 – Home Poll (I)
[NAI]

The Punjab Communist Party has also been stock-taking, and in a long report to the Central Committee in Bombay the provincial Organising Committee admitted that the Party was split by the old dissensions between the Kirtis and Communists, but refused to consider its own dissolution and threw the blame on the CPI Punjab representative, Iqbal Singh Hundal.



112: Extracts from Fortnightly Report from Bihar for the second half of March 1944

File No. 18/3/44 – Home Poll (I)

[NAI]

Kisan Sabha – Reports seem to indicate that the Communists regard the Bezwada Conference as a triumph for their own party. They consider that the Swami's presidential address was unconvincing and that he attempted to adopt a dictatorial attitude without success. Joshi was acclaimed as the future Lenin of India.

113: Extracts from Fortnightly Report from Punjab for the second half of March 1944

File No. 18/3/44 – Home Poll (I)

[NAI]

Apart from a series of small Kisan meetings in the Amritsar district there has been little open communist activity during the fortnight. Propaganda at these meetings has followed the contradictory lines now common to communist meetings and has consisted of the usual combination of appeals to resist Fascism with attacks on orderly Government thereby weakening effective resistance. Within the limits of their influence the Communists have succeeded in instilling in the minds of their audiences, hatred of Germany and Japan and belief in a complete Allied victory, albeit through Russian strength of arms, and have also supported Government's plans for price control and rationing in principle. Their criticism of these plans in points of detail and their exploitation of local economic difficulties have, however, largely discounted the value of their pro-Government propaganda. They no longer make any attempt to conceal the fact that their objective to prepare the masses to seize power once Fascism has been defeated, and in their usual over-optimistic manner appear to be under the delusion that the Congress leaders on their release from jail will have no hesitation in accepting them as equals in working for India's Independence irrespective of the fact that among themselves they admit that their alliance with Congress is merely one of political expediency.

(c) Communists – The Communists have watched with pleasure the disunity creeping into Sikh politics and Jinnah's attempts to disrupt the Unionist party. Master Tara Singh's withdrawal from politics has been welcomed as removing, at least temporarily, a bigoted and uncompromising opponent and opening possibilities of an approach to Akalis with progressive ideas along national and economic lines. Similarly, the replacement of the Unionist Government by a Muslim league Government would, in Communist opinion, substitute a more national and liberal form of Government for what they consider a reactionary and capitalist autocracy and would eliminate the Hon'ble Member for Revenue, whose popularity with the peasants is regarded as a restraining influence on the spread of Communism among that class.

At small rural meetings organised by the pro-Congress Akalis in the Amritsar district and

elsewhere-speakers have strongly attacked the Communists and accused them of being atheists and paid agents of Government, but in other respects have followed the Communist lead in criticising Government and demanding the immediate formation of a 'National' Government and the release of all political prisoners.

114: Extracts from Fortnightly Report from Bengal for the second half of March 1944

File No. 18/3/44 - Home Poll (I)

[NAI]

In Rajshahi, Communists and adherents of the Muslim League are said to have joined forces to capture the Food Committee recently set up by the Civil Supplies Department, while from Jalpaiguri and Rangpur come reports that members of the communist party are staging dramas on the food situation in a way likely to cause alarm and disaffection. The commissioner says that they are being warned and that some of the performances are being banned.

115: Extracts from Fortnightly Report from Bombay for the second half of March 1944

File No. 18/3/44 - Home Poll (I)

[NAI]

Statement from Press Adviser

| <i>S. No.</i> | <i>Name of Publication</i> | <i>Action taken and the date of action</i> | <i>Authority by whom action taken</i> | <i>Reasons for action taken</i> |
|---------------|----------------------------|--|---------------------------------------|---|
| 1 | 2 | 3 | 4 | 5 |
| 2 | People's War Bombay | The editor was warned to exercise moderation in the use of use of language in future. (11th March 1944). | Government | For publishing an article entitled 'Independence Day Call to all Patriots language in the issue of the 23rd January 1944 couched in immoderate language.' |

1 A reference to Document No. 96.



116: Extracts from Fortnightly Report from Madras for the first half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

Communist's wooing of the Congress also continues. The latest instance was a tour made by Prithivi Singh of the Punjab in the northern districts. He spoke at various places stressing the need for Hindu-Muslim unity, release of National Leaders and the formation of a National Government. He had informal talks with local congressmen in which he tried to impress upon them that communists are neither in favour of British 'Imperialism' nor against the Government. His attempts do not appear to have been very successful and at a meeting held at Tenali, a disturbance was created by the local congressmen.

117: Extracts from Fortnightly Report from Bengal for the first half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

The return by large majorities of the two Communist candidates to the labour seats in the Calcutta Corporation led to a series of congratulatory meetings. No disturbance occurred, but a defiant spirit was shown particularly in taking out processions after being warned against doing so.

118: Extracts from Fortnightly Report from Punjab for the first half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

(d) *Communists* – In spite of Jinnah's discouraging attitude to the Communist offer of co-operation in overthrowing the Unionist Ministry, Communists are still trying to penetrate into the League and their latest effort is the establishment of branch of the League in Lahore, ostensibly to organise a food committee. The introduction of rationing in three towns of the province has given Communists an opportunity to extend their influence in urban areas and they are using it by trying to assist the authorities instead of only criticising them. Anti-Akali propaganda, together with criticism of the Unionist Ministry and police and other local officials, continues to be a feature of Communist meetings in rural areas, especially in Amritsar, and attempts are still made to exploit local grievances. They have made little headway, however,

among zamindars, who have few grievances at present, while Akalis who have been busy with the SGPC election have had no time during the fortnight to counteract Communist propaganda. Communists are beginning to realise that, with the situation on the Assam front as it is, their demands that the British should leave India are rather out of place and they have altered their tone accordingly.

In order to improve Communist working but chiefly to compose the difference between local Communist and Kirtis, Dr Adhikari, a member of the Central Committee of the CPI has arrived in Lahore and intends to remain until an agreement is reached. These differences between the Communists and Kirtis are deep-seated and, although Adhikari may succeed in effecting a settlement before he leaves, the settlement is unlikely to be lasting.

119: Extracts from Fortnightly Report from Bihar for the second half of April 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

The Communists - It appears that the Provincial Congress C.P.I. is endeavouring to secure recruits in the ranks of Muslim League. The inducement is that there should be a food campaign on the lines of that which the Communists are pursuing.

120: Extracts from Fortnightly Report from Madras for the second half of April 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

Communists also continue their collections for 'Bengal relief' and take every chance to exploit the food situation. A striking example of their opportunism is reported from Nellore where they have been busy holding meetings requesting Government to introduce rationing soon. They know perfectly well that Government will introduce rationing shortly as the preliminary enumeration has been completed and they obviously wish to claim all the credit when it comes in.

121: May Day Call of the Communists

P.C. Joshi (ed.), *Correspondence between Mahatma Gandhi and P.C. Joshi* (1945), pp. 56–61

All together . . . Against Jap Aggression for Food and Freedom

May Day Call (1944) the Communist Party of India.

Our Destiny in Our hands

On this May Day, under the banner of Indian patriotism, we appeal to all our fellow-patriots and their great organisations for

Unqualified resistance to Jap invaders.

United relief for Bengal.

United struggle in all out towns and villages against the hoarders and for people's food.

All together for food for our people and freedom of our country!

A United India under its own National Government is destined to play together with China the same liberationist role in Asia as played by the Red Army in Europe.

Our Destiny and more is in our keeping.

On this May Day, the Communist Party warmly greets all fellow-fighters for freedom and appeals to their organisations for a common patriotic policy to save the country in this grave hour of national peril.

For two long years the threat of Fascist aggression hung over our heads. For the last two months it has become a grim reality.

Foiled in China, pressed back from the Pacific, the Japanese invading forces have crossed our borders. Decisive battles are being fought, and the fate of North Assam and East Bengal hangs in the balance. Will the invaders be hurled back to the Chind – win or will they march forward to Dimapur and Silchar?

The Allied armies enjoy all-round superiority. But which country has ever been successfully defended against the Fascist aggressors through military might alone?

The greatest weakness of the situation is that the British rulers still think in terms of military defence alone.

Weakness of the Home Front

Tojo's strength comes from the weakness of the British position in India under which the Indian people feel helpless. He hopes to exploit not only the helplessness but also the hunger of our people. Sixty million Bengalees right behind the front lines are in the grip of epidemics like Malaria, Cholera and Small-pox, the legacy of the last famine, and face a situation drifting towards a second famine.

In the rest of the country food prices are highest than farmers could ever imagine and the Government food plans are in the hands of the hoarders.

Manufacturers and merchants in their profit-hunt are getting round all control measures and openly engage themselves in activities which are classed in every other country as industrial sabotage.

The Government multiplies the economic chaos by initiating inflation, on the one hand, and introducing confiscatory measures, in the name of deflation on the other.

The front has been pierced, the people are helpless and the economic rear is on the verge of collapse.

Rouse the People Against the Japs

The people have to be roused not to bend the knee to the aggressor but the foremost patriotic leaders of the country are behind the bars.

Bose is coming with the Jap Army and the only effective answer to him can be that Nehru stands behind the Allied armies.

In every town and village hoarding and profiteering have be smashed and food won for the people, but the greatest and broadest organisation of the people, the National Congress, stands banned.

No situation could be worse than this for the Indian people and better for the Jap invaders

We share the righteous indignation of our fellow-patriots against the unchanged policy of the imperialist bureaucracy.

We however, realise that if Indian patriots only curse the bureaucracy and themselves play no positive role they will be guilty of doing nothing.

The Japs can exploit a break-through only if we keep quiet, the hoarders can produce famine conditions only if we sit silent. To drift is not to put our patriotism into practice when our people need it most, but it is to yield to frustration when we can least afford to do so.

All Aid to Assam

We welcome the ringing call of the Congress leaders of Assam. It is in the best traditions of our national movement. They have pledged themselves to fight panic and rouse the spirit of resistance among their own people. They have appealed to us for solidarity, we must not fail them.

The attack on Assam is the first thrust against our common motherland; solidarity with the people of Assam is our first fraternal duty.

On this May Day we appeal to our fellow patriots to join hands for a countrywide demonstration of our anti-Japanese hatred and solidarity with our brothers in Assam.

Help Bengal all the More

From disease-ridden, famished and famine-threatened Bengal comes, like a cry of anguish, the call for more money, medicines and men, through no less a person than Dr B.C. Roy, eminent physician and Congress leader. All the patriotic organisations have united themselves inside the Bengal Medical Relief Co-ordination Committee under his leadership.

On this May Day we appeal to our fellow patriots for another round of the country-wide 'help Bengal' campaign.

All that we can do for our brothers and sisters in Bengal will yet be too little, but the knowledge that the country is behind them will give them strength and inspire them to struggle harder against their own hoarders.

The cause of Bengal is above all differences. All that we do to unite behind Bengal will be added inspiration to Bengal's patriots to get still closer together among themselves, establish a United Ministry and raise such a powerful united people's movement that it will pull down the architects of famine, the hoarders, and embody anew the best tradition of Bengal's

patriotism. In the spirit of Tagore's letters to Noguchi it will denounce Bose as a traitor, its confident challenge Tojo's mercenaries will be:

'No part of Bengal, the homeland of most of India's martyrs, will become your foothold but it is there only to be your graveyard'.

Amery has once again repeated his charge against the Congress leaders. The bureaucracy is behaving as if the situation at the front was normal and nothing was wrong inside the country. This unbearable attitude either provokes or demoralises most of the patriots. They are led to argue: 'Our actions can make no difference, the British Government is not prepared to listen and the bureaucracy does not let us do anything'. Nothing could be further from reality.

U.S.S.R. Turns the Scale

Our taking up an unqualified anti-Jap stand, our rendering all possible assistance to Bengal may look matters of symbolic or small consequence in themselves. But they acquire a decisive and historic importance when we realise that this is the least we can and must do to rouse the spirit of our people to raise the banner of Indian patriotism alongside the freedom-loving nations of the world and to get their support for our cause and against the selfish policy of the British Imperialists.

The mighty victories of the Red Army are making history not only for the Soviet people but for every people. At Stalingrad the Red Army stopped Hitler's hordes from coming to India. Through its present counter-offensive it is inflicting crippling blows at the Hitlerite would-be conquerors of the world. The moment the Allies open the Second Front the mortal blow will be struck and therefore the entire military, naval and air strength of Britain and America will be available for war in Asia, against Hitler's double, Tojo.

Soviet victories are not mere military victories that will release for us unlimited military aid, they have inspired the growth of a new people's movement in Nazi-occupied Europe. The Soviet Government has encouraged and recognised the democratic forces and is actively helping all European countries to win united national Governments which together with the U.S.S.R. will build a new peaceful people's Europe.

Old Europe was the traditional base of World Imperialism. Europe is now passing out of the hands of imperialists into those of its own peoples. A people's Europe will be the moral and political ally of the Indian people and not of the British imperialists, whose pre-war (1917-1939) efforts to use it as a pawn in their own game of power-politics ended in yielding it to Hitler Fascism.

Unity at Home Means More International Support

When the real counter-offensive in Asia begins against the Japs, the British and American peoples will themselves realise that many more lives of their soldier-sons are being lost simply because they do not have the active support of the Indian people, that most of goods, arms and ammunition produced by their own labour is not being put to the best use because India is run by foreign bureaucrats and not by its patriotic leaders. How long will they stand the unnecessary sacrifice of their own sons, the wastage of the goods of their own tireless labour? The common people are the same the world over, freedom-loving and peaceful.

The more they see that all India's patriots and parties are ranging themselves against the Jap Fascists, the more rapidly they will see through the slanders of Amery and Co., levelled against the patriotic leaders of the nation.

All the major British Trade Unions have demanded Congress Leaders' release and establishment of National Government. Even Pethick Lawrence, Labour Party spokesman in the House of Commons has to echo the demand, raised a year back by the British Communists, that Amery must go.

The more the people of Britain and America see us fighting on the food front, the more easily they will trust us. What to us is the problem of feeding our own people is to them the problem of holding the rear behind the front manned by their soldier sons. The last Bengal famine was an indelible scar on the face of the bureaucracy, the second will mean the end of their day if we can show in practice that we continued to fight the hoarder while the bureaucrats relied upon them i.e., that we — all India's patriots — can and will rescue our country out of the chaos to which the bureaucrats have reduced it.

The more the Indian patriots discharge their own patriotic duty the sooner the British and American peoples will see that with an enslaved India as the base, the war against Fascist Japan can't be fought and won.

The longer we sit still the more hoarders will play hell with our people, reproduce Bengal's tragedy all over our land and the further the Japanese invaders will penetrate.

We greet the efforts of Mrs Naidu, the only member of the Congress Working Committee out of jail, in rousing patriotic opinion, by repudiating the policy of the Congress Socialists who had monopolised the name of the Congress, by calling upon all Congressmen to work for national unity and food for the people.

A real move forward was taken by our major patriotic organisations, the Congress and the League, when they forged a united front on the floor of the Central Assembly.

U.P. Congressmen have gone the farthest in assuring their League brothers that the right of self-determination is implicit in the Congress position.

We welcome all these moves. We, however, regret that they are yet halting, each party is waiting for the other to make the next gesture. The imperative need for coming together is universally recognised but old suspicions are dying hard. The gravity of the situation created by the Japanese attack and the worsening economic situation is not yet fully recognised as a dire emergency. That is why there is so much waiting, so many signs of helplessness rather than the crusader's confident spirit of faith in fellow fighters, of hope in our own capacity to rouse our 400 million people.

Our vast country is unconquerable if all the patriots rouse the people against the Japs.

Our ancient nation shall not go to pieces if all our patriots unite in the defence of our motherland and in the service of the people.

We shall win a National Government as soon as Congress and League unite and make a joint determined effort to get the support of the United Nations.

Against the peril that faces us this is the only way, for the goal we all desire this is the only path.



122: Extracts from Fortnightly Report from Madras for the first half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

A number of meetings have been held both in the City and in the mofussil welcoming Mr Gandhi's release and praying for his speedy recovery. The speeches made at these meetings have been usually restrained and confined to expressing a hope that the other Congress leaders will also be quickly released and that an attempt would be made by the Government to come to a settlement. Communists have taken prominent share at these meetings.

Communists – Communists were busy celebrating 'May Day' by various meetings and processions both in the City and in the mofussil. The speeches made on these occasions were of the usual stereotyped kind urging the release of Congress leaders, pleading for Hindu-Muslim unity and demanding 'drastic measures' to be taken to meet the food situation. As already stated above they were quick to take advantage of the situation created by Mr Gandhi's release and a circular issued by them has been intercepted containing instructions for the holding of meetings praying for Mr Gandhi's restoration to health and to agitate for the release of the other leaders.

123: Extracts from Fortnightly Report from U.P. for the first half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

From several areas come reports that Communists are making determined attempts to insinuate themselves with the Congress and also that agitators disguised as Communists are using the disguise to foster Congress propaganda. On the other hand, on some occasions, for example the Congress leaders meetings in Lucknow on April 16 and 17, the Communists were definitely cold-shouldered.

The workers of the R.G. Cotton Mills, Lucknow, who went on strike on April 16, resumed on April 21 on an assurance being given by the Managing Director. The Communists tried secretly to dissuade the workers from resuming without success. They have also continued their activity amongst labour in Cawnpore.

124: Extracts from Fortnightly Report from Punjab for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

(c) *Communists* – The Communists have been mainly pre-occupied with Dr Adhikari's attempts to compose the differences between the Communist party of India and the Kirtis. Details of the discussions on the internal problems of the Punjab Communist party are not yet available, but the Provincial Organising Committee has been dissolved and a secretariat consisting of Teja Singh Sutar and Sohan Singh Josh has been appointed in its place. Sajjad Zaheer, a member of the Central Committee of the Communist party of India has also been in Lahore trying to further the Communist approach to the Muslim League, but has met with very little encouragement. The Communists have, however, decided to support any Muslim M.L. As. who may secede from the Unionist party and join the Muslim League bloc.

125: Extracts from Fortnightly Report from Bihar for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

Communists – The May Day celebrations met with very little enthusiasm any where in the province. In Patna, Sunil Mukherji was able to obtain an audience of only about 30, mainly students. On the same day, Habibur Rahman made a speech of a very objectionable character.

126: Extracts from Fortnightly Report from C.P. & Berar for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

4. The Communist party were active in Nagpur when 'May Day' was observed at a meeting presided over by Om Prakash Mehta. The Central Committee's appeal for unqualified resistance to the Japanese, relief to Bengal, initiation of struggle against hoarding and profiteering and political unity for the establishment of National Government were laid in Amraoti, but attendances were small. At a Kisan Sabha meeting held in this district, one speaker said that after the Japanese had been driven out they would get rid of the British. At a meeting held at Bilaspur, an association called the 'Friends of Soviet Union Society' was formed with the aim of explaining to people of great victories that have been won by the Soviet over the

Axis. Several pleaders, some of whom are said to have congress sympathies, have become members of the Association and the Vice-President of the Labour Union of the Bengal Nagpur Railway, has also joined.

127: Extracts from Fortnightly Report from Assam for the first half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

Communists continue to take credit for maintaining public morale and for all measures of rationing and organization of distribution. They were aggrieved at refusal of permission for their meetings both at Shillong and Dibrugarh, the ostensible object in the former case being to express joy at the release of Mr Gandhi and in the latter the raising of public morale in face of the Japanese threat to Assam. Judging by a speech delivered by Mr Biswanath Mukherjee in a meeting which was held at Shillong, the platform of Communist leaders is actually more designed to create anxiety than to alleviate it, specially since public confidence is, as a matter of fact, unexpectedly high. The objecting Deputy Commissioners can therefore hardly be blamed for their refusal of permission.

128: Extracts from Fortnightly Report from Orissa for the first half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

The Communists – Communists in many parts of the province organised 'May Day' celebrations. At a Cuttack meeting, they passed resolutions demanding the release of political prisoners, the unconditional release of Mr Gandhi, and the formation of a national Government. Speakers criticised the Orissa Government for leasing the Duduma falls in the Koraput district to the Madras Government without consulting popular representatives. A speaker at a small meeting in Puri district expressed the view that the British Government, which had lost Malaya, Burma and held Manipur, should leave the defence of India to its inhabitants. In the Balasore district, a meeting of Communists passed resolutions urging more vigorous action to grow more food and to organise food distribution, the release of political prisoners, and new efforts to drive out the Japanese.



129. Extracts from Fortnightly Report from Punjab for the second half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

(b) *Communists* – Leading Communists of the province assembled at Lahore in the second week of May to hear Dr Adhikari's conclusions about the internal working of the party in the Punjab and Sajjad Zaheer's remarks on Muslims and Sikhs. Dr Adhikari, who arrived here in April, had been sent by the Central Committee of the C.P.I. to examine the reasons for the failure of the Punjab Communists to carry out their tasks. He found that the main reasons were internal dissensions, arising from Kirti Communist rivalry and based largely on misconceptions, and the lack of political education. He compelled the chief offenders to admit their faults and prescribed vigorous political action as the best remedy for internal dissensions. The general antipathy to the P.O.C. and the unpopularity of Iqbal Singh Hundal, the Punjab representative of the Central Committee of the C.P.I. were also forced on his attention and he has now abolished the P.O.C. and set up a provisional secretariat consisting of Teja Singh Sutanatar, with whom he has been much impressed, Sohan Singh Josh* and Manzar Razvi of Bihar, another Central Committee member. The latter, who has recently arrived, will supervise Punjab activities when Dr Adhikari returns to Bombay and, besides paying special attention the Labour front, will organise classes and study circles. Unity has been established for the time being and, if this continues, the party should be able to proceed with its plan, discussed at this meeting, of trying to unite the Muslim League, Akalis and Congress in order to overthrow the Unionist Ministry and, in the resulting political confusion and with an unstable Coalition Ministry functioning, to spread Communist influence in the Punjab. Dr Adhikari has suggested that Congress workers would be won over by propaganda asking for Gandhi to be allowed to meet other Congress leaders and by a campaign for Congress Muslim League unity; that the Muslim League should be approached by helping them against the Unionists; and that Sikhs should be united into progressive Nationalist body by suggesting that their Gurdwaras should be run on democratic lines and by encouraging their right of self-determination on a basis of unity with Muslims. Dr Adhikari has also made changes in the editorial staff of the Communist Gurmukhi newspaper 'Ajang-i-Azadi' and advised the starting of an Urdu edition for the benefit of Muslims.

130. Extracts from Fortnightly Report from U.P. for the second half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

In addition to observing 'May Day' in most areas Communists have continued to be active and have continued their attempts to ingratiate themselves with the Congress, but generally

these have been received with studied coldness. They have been prominent in attending meetings in connection with Gandhi's release, and in fact one district reports that it was significant that those meetings were attended mostly by Communists, while in Cawnpore they congratulated themselves for being responsible for Gandhi's release. They have also continued to demand the release of other Congress leaders.

131: Extracts from Fortnightly Report from Madras for the second half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

The Communists have been busy with summer schools in Guntur and are making arrangements to carry on party propaganda during the ensuing pushkaram festival at Rajahmundry. Their activities in the labour field and their attempts to capture those labour Unions which have not yet come under their sway also continue unabated.

132: Editorial from *People's War* (dt 14.5.1944)

P.C. Joshi (ed.), *Correspondence between Mahatma Gandhi & P.C. Joshi* (1945), pp. 61–3 (Editorial from *People's War*, Vol. II, No. 46, May 14, 1944).

Gandhiji, the beloved leader of the greatest patriotic organisation of our people, the mighty National Congress, is back in our midst.

We share the nation's feeling of relief, an unbearable load is off our chest. We offer Gandhiji our respectful greetings.

Like all our countrymen, we are anxious about his health.

We have no doubt that once again his iron will, the best of our doctors skill and the whole nation's heart-felt desire will triumph over old age and disease. Gandhiji will win back normal health and resume his post at the head of our national forces.

Every son and daughter of India, every patriotic organisation of our land, is looking to the greatest son of our nation to take it out of the bog, in which none is safe, into which all are sinking and from which none can get out on his own.

Gandhiji's first statement will make history not only for our country, but for freedom-loving humanity. The imperialist bureaucrats have gone out of their way to underline that he has been set free only on medical grounds. They obviously want to carry on with deadlock. They prevented the free alliance and brotherly co-operation between India, Britain and the United Nations. They mean to stick to their outworn guns that are pointed the wrong way. Despite them, Gandhiji has to steer a course through which our nation may emerge free in a free world.

We look forward to the first pronouncement of Gandhiji that will authoritatively state the

Congress policy for the day. His letters to Linlithgow killed the imperialist slanders against the Congress. His comrade-in-arms, Sarojini Devi, spoke for him as only she can, till she was gagged. His faithful followers, the Congress leaders of Assam and U.P., have carried forward the banner. But Congressmen as a whole are not of one mind. They are justifiably bitter against the Government, but unfortunately confused about what to do. Gandhiji alone can unite and rouse them to action. We hope that Gandhiji will see that there is no time to lose when the Japanese aggressors aided by their puppet Bose have already marched inside the borders of our Motherland. We hope that Gandhiji will see that there is no time to lose when the Japanese aggressors aided by their puppet Bose have already marched inside the borders of our Motherland.

The more unqualified and inspiring Gandhiji's call to our people to resist the Fascist aggressors, the more speedily the peoples of Britain and America will demand that Wavell settle with him. It is becoming apparent to all honest men abroad that Mountbatten and Stilwell on their own are not succeeding against the Japs. Everyone knows that Gandhiji can ensure the whole hearted support of India to Allied Arms. The lead that Gandhiji will give our nation now will determine how broad and swift will be the rally of democratic forces abroad for immediate settlement with India.

Within the country, the second biggest political organisation — the League — is as fed up with the deadlock as is the Congress. Every Leaguer is looking to Gandhiji, to see what he does to accept their right of self-determination and negotiate with their leader Mr Jinnah, so that they too may throw in their full weight against the bureaucracy and establish united front for National Government. But Mr Jinnah would not offer his hand of co-operation unless he felt assured that Gandhiji is prepared to concede self-determination to Muslim nationalities. Only Gandhiji can rise above past prejudices, recognise after due discussion, but sooner than most, the inherent justice of the League demand, and promptly forge the irresistible weapon of National Unity on the basis of self-determination for Muslim nationalities and National Government for the whole country.

Gandhiji made the Congress powerful by making Congressmen serve the people in times of need. Today, not in one locality but all over the country, not one section of the people but all, are in dire distress because of the rise not only in food prices, but in all necessities of life. We look to Gandhiji to denounce hoarding and speculating as a sin against the nation and to lead Congressmen into food work as the best way to serve the people and to tell Congressmen that not to unite with all to get people their food is not patriotism but sectarianism.

Gandhiji made the Congress the biggest common patriotic organisation that any enslaved nation has ever been able to raise by focussing attention on that single task before the nation that was of the utmost importance for the time being and for which the people could do something on their own despite the rule of an alien bureaucracy. Bengal is not only threatened by the Jap marauders, but a second famine; millions are dead and tens of thousands are dying today of disease and hunger. We look to Gandhiji to rouse the people outside Bengal to save Bengal, and themselves to escape the fate of Bengal by looking after their own food and taking care of the hoarder amongst them.

Our greetings to Gandhiji are an ardent appeal to instil his own boundless patriotic faith in his followers of the Congress, to do all he can to unite the Congress and the League, to launch the final patriotic crusade of our ancient nation for food for our people, freedom for our country and for brotherly alliance with the freedom-loving nations of the world. We 25,000 Indian Communists, pledge to him our wholehearted support.

133: Extracts from Fortnightly Report from Punjab for the first half of June 1944

File No. 18/6/44 – Home Poll (I)

[NAI]

Communists – There has been little Communist activity during the fortnight beyond the holding of a few secret meetings in districts at which members of the Provincial Organising Committee have instructed Communist workers in Dr Adhikari's decisions in regard to party unity and political word. Workers have been directed to make common cause with the progressive wing of the Akali Party with a view to uprooting Giani Singh's control over the Gurdwaras and, where possible, to infiltrate into the Shiromani Akali Dal, and to support the Muslim League in the hope of overthrowing the Unionist Ministry. The Communists are at present mainly interested in consolidating the strength of their party by exploiting local grievances and ingratiating themselves with the workers and peasants, so that when they feel the time has come to make a bid for power they will have the support of a strong organisation behind them. Their leaders have no wish to weaken their ranks by precipitating a conflict with Government.

134: Extracts from Fortnightly Report from Bombay for the second half of June 1944

File No. 18/6/44 – Home Poll (I)

[NAI]

Communist workers in Gujarat, Thana and Satara have been touring their respective districts to enquire into the food situation and advising the public to retain stocks of food grain sufficient for their personal needs and to sell the remainder to Government. The communists of Ahmednagar are likewise touring the district carrying on propaganda in favour of rationing.

135: Extracts from Fortnightly Report from Orissa for the second half of June 1944

File No. 18/6/44 – Home Poll (I)

[NAI]

5. *The Communists:* Communist interference in the business of procuring food is on the increase. Their newspaper the *Muktijudha* continues to publish exaggerated and unfounded reports of starvation. Their procedure is to hold meetings to proclaim the failure of the bureaucracy to solve the problem and to make allegations that the officials and the police are

in alliance with the hoarders and the merchants. In the Puri district, Communists are reported to be preaching the doctrine of village self-sufficiency for the purpose of preventing the movement of paddy from one village to another.

At recent meetings in the Cuttack district Communist speakers demanded the opening of more relief centres, the release of political prisoners, and the maintenance of the Parlakimedi ministry in office. They also appealed to all cultivators to join the kisan organisation. One of the organisers was arrested under rule 129 (1) of the Defence of India Rules because he was believed to have instigated people to violence.

The anxiety of these so-called Communists to maintain the Parlakimedi ministry in office has aroused adverse comments in Congress and other circles. It is evident that they hoped through their influence over that ministry to acquire a strong foothold inside Government's organisation for the procurement and distribution of food and to secure the quick release of some security prisoners on the score of their anti-Fascist declaration.

136: Mahatma Gandhi to P.C. Joshi

P.C. Joshi (ed.), *Correspondence between Mahatma Gandhi and P.C. Joshi* (1945), pp. 17-22

As at Sevagram (C.P.)
Camp Panchgani,
30th July, 1944.

Dear Friend,

I had duly received your letter of 14th June and also your letter of 26th of July sent with Shri Kumaramangalam.

Your answer to my first question provokes further question for your reply. I understand that although the chief actors among the Allied powers are by no means inclined towards real democracy, you think that by the time the War ends their designs will be confounded and that the people all the world over will suddenly find self-expression and overthrow the present leaders. In the peoples, according to answer, I am entitled to include us, other Asiatics and Negroes, for that matter perhaps also the proletariat of Japan and Germany. If such is your belief, I must confess that I do not share it but I keep myself open to conviction. Meanwhile I suggest that the title '*Peoples' War*' is highly misleading. It enables the Government in India to claim that at least one popular party considers this as people's war. I suggest too that Russia's limited alliance with the Allied powers cannot by any stretch of imagination convert what was before an imperialistic war against the Nazi combine, into a people's war.

Holding the view I do, it is superfluous for me now to answer your argument that 'this war has split the world into two camps'. Between Scylla and Charybdis, if I sail in either direction, I suffer shipwreck. Therefore I have to be in the midst of the storm. I suggested a way out. Naturally, it has been rejected because the powers that be, do not want to relax their grip on India. As I am composing this letter to you, I have read and re-read your argument.

Every paragraph offends, for to me, it lacks reality. Please believe me that my prejudice against your party has nothing to do with my examination of your answer to the first question.

Q-2. Your answer as far as it goes, I hold to be completely satisfactory. I will not ask you for further proof about your finances.

After I have dealt with your answer, I will put my difficulties before you. Your answers to the other questions do not admit of a categorical reply. I understand your answers and appreciate them too. If I was free from prejudices, I would have no hesitation in accepting your answers. But my difficulty is real and I ask for your sympathy. When I make the admission that I have prejudices, it is an appeal to you to have patience with me and to disarm my prejudices in the best manner you can. I can only give you my assurance that I am ready to see anybody you want me to see, to read anything you want me to read and to examine every argument or fact produced by you as dispassionately as I can. I give you this further assurance that I have not acted upon my prejudice, nor shall I do so unless the prejudices harden into a confirmed belief that your party represents a force of Evil and is really an obstacle in the way of the fight for freedom. I am not likely to have that belief easily and, if I have it, you shall have ample notice so as to enable you to wean me from it. I know your worth. You have very able young men and women, as selfless as I would claim to be. You are all hard working and possess great energy and you impose strict discipline on your workers. All this I prize and admire. I would not easily lose such a force because of any preconceived notions of mine.

If I have been inordinately long in dealing with your answers which you sent me so promptly, it was because, as you are aware I was preoccupied and also because I was examining the evidence that was pouring in upon me unsolicited against your party. I asked them to let me use their names and they have given me the permission. I take the latest first i.e. Babu Manoranjan Chaudhary. I did not even know that he was coming and when he did ask for an appointment, it was in connection with my acceptance of the Rajaji formula. But really he took the greater part of my time to tell me that the Communists had done great injury to the national cause. I am using a milder term than was really used before me. He has left papers which I have not been able to study. And he has also left with me a printed book which I have glanced through personally and it makes bad reading. The printed book can be seen by any deputy you may choose to send. Probably you have seen it yourself.

The other is Sjt. Kaleshwar Rao of Bezwada. He also sent me a long letter from which I quote the salient passages (see encl). Add to this the numerous letters I have received from correspondents, known and unknown, all impeaching the party. I understand too that Shri Jaiprakash Narain is also 'disillusioned'.

You have referred me to Mian Ifikharuddin and Shaukat Ansari. Both of whom I know well and for whom I have great regard. Unfortunately, Ifikharuddin is in Jail. I have never talked about Communism to Shaukat, because I know him and his wife Zohra apart from their politics. But no general assurance from them will obliterate the evidence that has forced itself upon me and of which I have given you a bird's eye view. I will ask you not to dismiss all this evidence as so much prejudice. I would ask you not to be angry with your critics however ignorant they may be. You will have legitimate cause for anger, if their criticism is malicious and conceived with a hostile intent. Lastly, I ask you to believe me that I want to impress the services of everyone of you for the use of independence to be fought along the lines that I have chalked out for myself and the whole country. And if I am convinced that I am going astray and that yours is the correct method, I would like to be won over by you

to your side and I will sincerely and gladly serve as an apprentice wanting to be enlisted as a unit in your ranks.

Yours sincerely,

M.K. Gandhi.

Enclosure

They enacted dramas in the commune in the theme of every one of which there was shooting, execution and bloody murderers. The student members were made to act as executioners or murderers with hands painted red. They made it a rule to get cooked flesh every day in the commune and every member must sit at the common table. Hereditary vegetarians like Brahmins and Vaisyas including students were purposely taught to eat flesh so as to feel no abhorrence to violence. One Brahmin M. A. told me that he took to flesh eating because Gandhi was insisting on non-violence. Another Vaisya B.Sc. told me that he got freedom from the use of wretched Khaddar from that time which he had been using for more than twenty years. He became an ardent champion of flesh eating. They held classes in the yard there. They were anti-Gandhi, anti-Truth, anti-Non-violence, anti-Congress high command and anti-God and anti-Khaddar and anti-village industries and advocated sexual anarchy in their speeches. In one of those meetings one of their leaders declared Gandhi as the Rasputin of India.

... There is a book written by Engels, which they studied, in which he advocates group marriages or twin marriages (two wives for two husbands jointly) and condemns monogamy as the bourgeois invention to suppress women's freedom.' ... 'They act as spies and informers with the police against the ordinary Congressmen particularly against the nationalist students, youth and ryot workers whom they consider as their chief rivals. They got secret instructions from their party leader to use sticks and beat their opponents in order to suppress them, besides handing them over to the police even by giving false information.

137: News item in *The Hindu* (dt 6.8.1944)

Govt. of Madras U.S. Files, File No. 109/44

[TNA]

Ban on Meeting of Andhra Congressmen

Leaders Condemn Guntur Collector's Action

Guntur, Aug. 3.

Mr Konda Venkatappayya Pantulu, when interviewed on the banning of the Andhra Provincial Congress legislators' and Congress leaders' meeting to consider the proposals of Mahatma Gandhi, said;

The Government is very unreasonable in banning the meeting proposed to be held here to-day. The object of the meeting is to consider the proposals made by Mahatma Gandhi in the matter of constitutional reform. The Government has failed to understand the spirit of reconciliation behind these proposals and the object of the meeting, namely, to promote the same. In preventing a fair discussion

of such proposals and arriving at a common understanding regarding them, one is led to believe that the Government is not in a mood to end the deadlock. — U.P.I.

Action 'Unwarranted'

Bezwada, Aug. 5.

The Secretary, Andhra Committee of the Communist Party of India wires:

The action of the District Magistrate, Guntur in banning the meeting of legislators and Congress leaders of the district, which was to have been held at Guntur on the 3rd instant, is uncalled for and unwarranted. The conveners of the meeting, Messrs. A. Kaleswara Rao and B. Gopala Reddi had, previous to the meeting, definitely expressed their opinion through press statements about the present political deadlock. They had welcomed Gandhiji's proposals for solving the political deadlock, as enunciated in his interview with Mr Gelder, as well as his acceptance of C.R.'s six-point formula for Congress-League agreement. At a time when the whole country is looking forward eagerly for a settlement of the communal problem and formation of a National Government for the defence of our motherland, this provocative act of the Guntur District Magistrate is most reprehensible.

A similar ban has been issued by the Madras Police Commissioner on a meeting of Congress Legislators of Madras, which was announced to take place in Madras. Of all Provincial Governments, the Madras Government seems to be intent on winning the laurels for repression. Considering the shifts that are taking place among Congressmen, I appeal to the Madras Government to act in future with a better estimate of the realities.

Coimbatore Congressmen to Meet

Revival of Normal Political Work

Mr T.S. Avinashilingam, M.L.A. (Central), has issued the following statement:

I hope all Congressmen and generally all the people will be glad to know the following information. I had written to the District Collector of Coimbatore asking him whether there is any ban on the meeting of Town, Taluk and District Congress Committees. He has replied saying: 'There is no objection to your summoning a meeting of Town, Taluk and District Congress Committees, provided it is not open to the public.'

Mahatmaji has said, in his statement, that the Congress Committees should revive normal political and constructive work. We are thinking of holding a meeting of the District Congress Committees in about a couple of weeks. I hope this will apply to all the other districts also and they can also revive their Town, Taluk and District Committees for normal political and constructive work.



138: Government of India to all Provincial Governments

The Transfer of Power, Vol. IV, Doc. 669

Government of India, Home Department to all Provincial Governments and Chief Commissioners (except Panth Piploda)

Express Letter, L/PEJ/8/681: f9

SECRET

New Delhi, 21 August 1944

No. 7/5/44 - Poll (I)

Our letter No. 7/15-12 - Poll (I)¹ dated 20th September, 1943, reviewed the activities of the Communist Party of India since the removal of the ban on the Party in July of the preceding year. The conclusion reached was that except in the propaganda sphere, where the activities of the Party had been objectionable, its legalisation had on the whole proved justified. It was recommended that Government should adopt an attitude of neutrality to the Party's activities.

2. Practically a year has elapsed. During this period, there have been no startling development. The pro-war policy of the Party has been maintained, though the practical effect of it has been slight; and if public morale has improved it has been due far more to the success of the Allied Arms than to the teachings of the Communists. Their anti-Government propaganda has also been continued and; if anything, has increased: but even here it appears from the replies to our letter No. 7/6/44 - Poll (I)² dated 19th May 1944, that the circulation of the Communist press is small and the effect of its writings neither great nor increasing. In general, the Party's influence seems to be on the decline; its finances are showing progressive signs of deterioration; and its political approaches to the Congress and the Muslim league have produced negligible results.

3. With the approaching end of the war, it is necessary to review a policy which was essentially short term in character and which was based partly on the desire to give a fair chance to any political party in this country that was prepared openly to support the war effort. When the war has been won, the Communists will be faced with the need of finding a new platform and though their post-war activities may well be given a specious cloak of Socialism or Communism, we have no reason to believe that their long-term revolutionary goal has ever been set aside. Indeed the essence of the problem is as it always has been in the 'long term view' that the majority of the party are revolutionaries first and Communists second and that they will make every effort to take advantage of the troubled conditions that are bound to accompany the difficult processes of demobilisation and changing over from war time to peace time economy.

4. The need for continued and increasing vigilance is therefore, clear. This need not however involve any radical departure from existing policy; nor do we consider that any such departure is at present either necessary or desirable. Certainly any drastic step, such as reimposing the ban on the Party, would only drive Communist activity underground, thus rendering it more dangerous, and at the same time provide the Party with the sort of romantic

appeal which it at present lacks. It would also destroy any faint hopes there may be of the Party's developing as a constitutional opposition to the capitalistic clique which appears at present to be dominating the Congress Party. From all these points of view the balance of advantage lies in keeping the the party legal as long as possible. We consider, therefore, that the existing policy of neutrality towards the Party and its members should be maintained. We would emphasize, however that this policy entitles the Communists to no favours; they should receive the same treatment under the law as any other member of the public. Further it gives them no excuse for underground activities and thus justifies the prompt suppression of any attempt to revive a secret organisation.

5. The policy of no favours should, we consider, be applied particularly to the Communist press (subject of course to the procedure that governs the relations between Government and the Press as a whole) and we would expect the Communist newspapers to be proceeded against, in whatever way possible, if they offend against the law. We favour the taking of security under the Press Act where this can be done; but there is also the power to subject Communist newspapers to precensorship orders under Defence Rule 41³ in respect to particular matters or classes of matter; and there may be cases in which such action would be justified and effective. We are arranging for the strict application of the newsprint control and paper economy orders to the Communist Press. No exemption from, or relaxation of, these orders will be granted to any Communist newspaper so long as the present tone of their press continues and we should be glad if you would have a watch maintained to ensure that the Communist press in your Province does not evade the provisions of these orders.

R. Tottenham

Additional Secretary to the Government of India.

1. Doc 69.
2. Not printed.
3. Not printed.

139: Extracts from evidence from Mr Somnath Lahiri, Mr Bhowani Sen and Mr Bhupesh Gupta, of the Communist Party, before Famine Inquiry Commission on 2.9.1944

Nanavati Papers, Vol. III
[NAI]

54. **Mr Ramamurty:** If there is need to take surplus stocks and the Government requisition such stocks from the people who have got them, then don't you think that there will be very strong feeling against it? **Mr Sen** Friction will be avoided if there is cooperation with officers and local people's committees. People would cooperate provided such committees are organised from rural representatives. Last year when there was anti-hoarding drive in the months of July, August the food committees were then composed of representatives of

communist parties, Kisan Sabha and even individual Congressmen accompanied the officers to unearth stocks from the houses of villagers. Unfortunately, in the case of Calcutta, no such committees or representatives were allowed to accompany them to the houses or godowns of big industrialists or stockists.

55. Were any stocks found in the districts where this food drive took place – not much stocks were found.

56. **Chairman:** Do you think there was no evasion? – **Mr Lahiri:** There was not such cooperation because of the Government policy. Food Committees in many cases were presided over by the S.D.O's. concerned who chose their own people and the general public was not really taken into confidence.

57. Who should choose the members? – People should have chosen members on those committees. **Mr Sen:** It was done in many places and it was successful **Mr Gupta:** When actually anti-hoarding drive was launched in districts, there was a popular demand put forward in Calcutta by very large section of public for anti-hoarding drive to be immediately launched in Calcutta. It came very late.

58. Do you think the food drive in the first instance was satisfactory? – **Mr Sen:** It was largely evaded because in many areas really representative committees were not formed.

59. Were the committees unsatisfactory in greater part of the province? – Yes. There is special reason for it. In the absence of a Provincial All Parties' food committee with which the Government cooperates, there was no incentive to patriotic people joining local food committees in a large number of areas and the local officials too in many places had chosen wrong persons for such committees. Representatives of different political parties should join such organisations to make it a success. For purposes of requisitioning and commandeering, there should be at the provincial top a sort of all parties food committee which should co-operate with the Government's food measures.

60. Do you think you could get all parties committee to co-operate with the Government? – Yes. **Mr Lahiri:** It should have the power to control procurement and distribution of foodstuffs. It is possible to get their co-operation if real power is given, to all parties. What we mean is that an all parties' food advisory committee and the Government should co-operate and that the Government should act on the advice of such a body on food matters. There is no question of setting up a parallel Government. There should be a representative committee and the Government should co-operate with the committee. That is the idea . . .

Note: Earlier part of this document is given in Chapter VIII – Doc. 93.



140: P.C. Joshi to Mahatma Gandhi

P.C. Joshi (ed.), *Correspondence between Mahatma Gandhi and P.C. Joshi* (1945), pp. 22-36

Bombay,
12th September, 1944.

Dear Gandhiji,

Your letter of 30th July was duly delivered to me by Shri Hutheesing. Within 2 days of its receipt by me one of us who deals with Mr Kanji Dwarakadas over labour problems was told in a casual conversation over the telephone that he understands that we had received your second letter and that you had accepted our explanation regarding our finances, but that you were now inquiring about our morals. I hope you understand our own reactions to the way the problem of correspondence with us is being dealt with by your Secretariat. In several papers messages have appeared that give the substance of your questions to us but not our answer to you and make insinuations. We have kept the Press at arm's length so far.

In public life there is a code and in our national movement we all take a particular pride in the fact that we observe a higher code than in the public life of other countries. I am saying this not only because we feel bad about it but because it brings discredit to our national movement of which you are the living symbol.

I may as well give in the very beginning, our reaction to your letter as a whole. If my own father had written to me what you have written, I would NOT have answered his letter and I would never again have gone to meet him. I am writing to you because you are the nation's Father, it will be unpatriotic on my part to get angry with you, even when you insult and humiliate us. I know you don't mean it but your ignorance of our views and your prejudices against our Party are so great that you don't even realise what you are writing. I would request you to show the copy of your letters to me to Mrs Naidu and Syts. Bhulabhai Desai and C. Rajagopalachariar and hear for yourself if they do not also agree with me that I am perfectly justified in so sharply reacting to your letter.

I will not take up the political part of your letter where you think that our policy is pro-Government. I do not hope to convince you through letters on this point, and you yourself say that our policy is not the basis of your prejudices against us.

We cannot discuss political issues objectively as long as prejudices persist.

I am not waiting for the day when the New Delhi archives fall into the Nation's hands, they will tell you what the Government thinks of our present political policy!

Most of the newspapers have been given relief about paper quota against recent heavy restrictions. We also applied to the Government. I am enclosing copies of letters which will tell you that the Government has not given our Journals and Publishing House the relief which most of the 'nationalist' ones have already secured. This much about your fear 'I suggest that the title 'People's War' is highly misleading. It enables the Government in India to claim that at least one popular Party considers this as 'People's War'.

I will discuss political issues with you only when you feel you have no more prejudices left and you consider us to be as honest as you claim yourself to be.

We have been thinking hard what should make you so hostile towards us and the root lies in your own mistaken understanding of what Communism is. You are fundamentally a religious person and have an ethical code. You relate your fundamental religious beliefs to your political work. You seem to think that Communism means that 'the end justifies the means' and therefore that the Communists are capable of any opportunist policies and any vile trick if they think these will serve their ends. Such a belief about the tenets of Communism makes you lend your ears to any slander against us.

By the way this is an outmoded slogan against us and educated persons in Europe gave it up after the twenties. I used to hear it often about ten years back. I meet hundreds of intellectuals and non-Communist patriots but I hear it no more.

I do not want you to take my word for anything, but I do want you just to spend a little time studying Communism from the ethical angle itself. You know the Dean of Canterbury, you have stayed with him. He is your friend and also ours. He is an intensely religious person. His religious beliefs have led him to become our friend. He is not a Party Member but a very good sympathiser. He is on the Editorial Board of the *Daily Worker*, British Communist daily. He has written on problems from a religious-ethical angle. I would earnestly request you to read his book 'Socialist Sixth of the World' and his pamphlet, 'Marxism and the Individual' (printed in India as the second part of 'The Heritage We Acclaim'). They will help you to see that we Communists are very 'religious' in the best sense of the word, even though we profess adherence to no religion. We try to conform to a moral-ethical code which religions preach but whose followers never practise and more than that our moral code is more strict and demands greater material sacrifices and lifelong self-education, and very hard practical work in the daily service of the people.

I would like to hear from you what you think of the Dean's writings and if they have helped you to understand us better. You have been gracious enough to promise that you will read whatever I recommend. We regularly send our weekly to you. I would request you to glance through it and every week read any bit that catches your eye and after 3 months let me know again if you still think we are woolly in the head and unpatriotic. Send me back any single para that you think helps the Government and hurts the people.

You accept my answer about our finances and hold the position to be 'completely satisfactory.' I sent you categorical answer on the other points and I enclosed documents and yet you think that you cannot give a 'categorical reply.' You appreciate them but say: 'If I was free from prejudices I would have no hesitation in accepting your answers.' It hurts us more than you can imagine to read that our nation's leader pleads prejudices as standing in the way of examining slander against a young patriotic party.

Mud-slinging at political opponents is an old weapon of those who have lost faith in the people and given up all moral values. Just as the bureaucracy attempted to use that weapon against you, challenging your integrity and accusing you of pro-Japanism. Some C.S. Pers and Boseites are using it against us. You are getting letters and documents against us as part of a well-organised campaign against us by these parties. They have tried out in their own localities all the slanders that they are now regaling to you and failed. After your release they are trying to prejudice you.

In this they are helped by the prejudices of many honest Congressmen against us. You yourself, it seems, are puzzled as to why some honest Congressmen should be so passionately

anti-Communist. The reason is not far to seek. Since 9th August we stuck to our convictions and refused to join the sabotage campaign because we were convinced that these were against the interests of our country. We campaigned among people and invited their wrath upon our heads. A section of Congressmen misinterpreted our policy as being against the Congress and the nation. Subsequent events have shown it was not so. Their subjective anger against us, political intolerance, and refusal to concede patriotism to those differing from them makes them sad victims of C.S.P. propaganda. The situation is often so tragic that while our entire Party defends the Congress against charge of pro-Japanism, they slander us as the enemies of the people.

I will quote but one instance of political intolerance in Congress ranks and that in connection not with ourselves. Quite a good part of the middle ranks of the Congress think even now that Mr Jinnah is an agent of the Government and you are ill-advised in negotiating with him. They cannot for their life believe that there are patriots inside the League also. This same kind of blind prejudice is displayed towards us. Yet we are confident that we will win the confidence of honest Congressmen more and more by working with them and as they will be helped by life itself to live down their prejudices.

If you enquire into the bona fides of the persons who have written to you, you will find that they are those who organised or supported the post-9th August sabotage campaign or have been intensely prejudiced against us by these people.

They are bitter against us because we opposed sabotage and exposed them not only in words but in practice.

After your letters from jail and later statements they cannot attack us politically and thus are reduced to mean tricks.

I have yet to come across a person whom anyone will call a patriot who will utter to my face the slanders that seem to have reached you and who will have the courage to repeat them before the Congress and League leaders of his own district.

I would have expected you to tell the persons who seem to give you so much 'evidence' (which I consider to be slanders) that if all that they say about the Communists is right, it should be the easiest thing for them to wipe us out in their district and that they need not bother you about 'Communists' who on their own report are a gang of unpatriotic degenerates. This is how I would like the National Father to act, who has a very large family to look after.

You have referred me to two cases. I will take them one by one:

A) Re: B. Manoranjan Chowdhury.

He had seen me before he met you. He came to our office with the uncle of my wife who was an old friend of his but sat in the waiting room fearing that I would not meet him. When the Uncle told me that he wanted to meet me, I invited him in for a talk. He congratulated me for marrying 'the best Bengali girl' and made me blush. He told me that in his own district Noakhali the 'best workers' are inside the Party! He complimented me for building up 'the best organised Party' in India! And a lot more in the same strain. In the end he told me that he does not agree with us on all points though he admires my 'powerful writing'! I had not met him before and was just polite and pleasant to him.

This person comes to you without an appointment. (He was a scout for Dr Shyamaprosad and his courier).

He asked for an interview over the Rajaji formula, but took the 'greater part' of your time telling you that we had 'done great injury to the national cause.' (He was preparing the ground

for Dr Shyamaprosad to meet you and testing out what standing the thrice cursed Communists had with you).

He has left papers with you which you have not been able to study.

He has left with you a printed book. You have not given me its title, but I guess that it is likely to be Kalyani Bhattacharya's 'War Against the People.' I have not read the book but only glanced at it and seen through the cartoons. When I received it I sent a wire to our Bengal Committee if it should be answered in the People's War and I got the answer that I need not bother because it had been withdrawn from circulation as all decent Bengaless who read it felt disgusted over it.

What does the book say? It states that I am Maxwell's boy and insinuates that our girls comrades in Bengal are like prostitutes. What is the evidence of facts? None, but through the book the allegation is made that Maxwell pays me and my Party; the rest of the book consists of verbal decoration around this theme. You have yourself seen through the 'paid-Government-agent' slander. I will take the answer to our food policy being pro-Government later, but what is the positive call to the people that this book itself gives? — food riots, 'revolution,' just what a Jap agent in Bengal would advocate. The book was banned after a while and so far as I know, not one Bengali journal protested against ban!

I will take the author of the book first. She did not write the book herself; I know it for a fact that Dr Shyamaprosad got it written and paid for its publication.

Now I come to the contents of the book. It is an answer to a series of articles I wrote on the first Bengal famine, in the People's War; they created a sensation in Bengal and Syt. Bhulabhai Desai told a comrade of ours that I have helped him to get a clear picture of Bengal famine for the first time. The articles were later reprinted into a pamphlet which became the best seller and went into two editions within two weeks. In those articles I exposed Shyamaprosad as being a hoarders' man in policy and a communal factionalist in practice. And this pamphlet of Kalyani Bhattacharya was his 'reply' to mine.

I don't expect you to study the Bengal famine and its after-effects; you are busy dealing with the basic national political issue by meeting Mr Jinnah and if it comes off, I know you would have done your bit for Bengal.

I will give you a reference that you will find amply satisfying, you know X.I got most of my factual data from him, when he saw the articles he agreed with my analysis. During my next visit to Bengal he invited me to stay with him for a while and we became still more friendly. He is an eminent intellectual and he is not a Communist. He is a Bengali, a patriot, a scientist and a statistician. Please send him Kalyani Bhattacharya's pamphlet and ask him what he thinks of the pamphlet and also what he thinks of what we write in the People's War on Bengal's food. After you have read his answer you will understand why I am so indignant.

By the way, several of his students and relatives are in the Party. He and his wife know several of our Party boys and girls. I would like you to send *by hand* copies of your two letters to me and my answers. I am confident that he and his wife will tell you that you are letting your leg be pulled.

I could give you any number of references in Bengal, of the best sons and daughters of Bengal from every walk of life but I think one is enough.

Dr Shyamaprosad and his men are campaigning against you in Bengal. We are not only supporting you but putting faith and courage into Congressmen to get and fight Dr Shyamaprosad. And yet you ask me to 'explain' etc. and you lend your ear to Dr Shyamaprosad and his men!

If you trust Dr Shyamaprosad more than me, I would request you to put us both to the test of the verdict of the people I will go down to Bengal and let both of us organise mass rallies under our own banners, and on our own political policies. He through his Hindu Mahasabha and I, through our Party. In Calcutta our meeting will be twice the size of his and in the districts four to ten times his meeting. I am a non-Bengali and a bad speaker while Dr Shyamaprosad is a great demagogue. I will make your delegate see mass rallies in the villages of Bengal the like of which only you could see if and when you go to that unfortunate province.

B) Re. Extract from Kaleshwar Rao's Letter

If you showed it to ANY honest person who knows anything about Communism and has at all seen the Indian Communists at work in any part of India he will tell you that it cannot but be all lies.

Rajaji has been to our Commune and dined with us. When I told him about our food jocularly that we are trying to beat the old man (i.e. you) at his own game, he told me that my food was more *Satwik* than yours!

Gelder has eaten with us on a Saturday when we get our weekly mutton-curry and also on week days when we have the plainest of vegetarian meals. He is a great admirer of yours. You casually ask him what he thinks of our food and the way we live.

Mrs Naidu has been a poetess and a great lover of our culture. She knows our poet comrades, she has seen our boys and girls dance and sing. You ask her what sort of culture we go in for and what we are doing for Indian culture.

Our Central Cultural Squad is rehearsing a new programme. While you are in Bombay you can drop in any time, unannounced. I am confident that it will make your heart swell with pride to hear them sing and dance, and you will like to hug all the boys and girls. They rehearse from 8-12 noon, and 2-7 p.m.

All the foreign correspondents assembled in Bombay to cover your meeting are anxious to see the squad at work to catch a bit of Indian folk-culture. When any of them comes to you at Wardha later you ask them what they think of what they heard and saw performed.

All the above is only to help you to see how much Kaleshwar Rao has wronged us by writing that letter to you.

But you are a lawyer too. I would ask you to call our Andhra Party leader, Sundarayya and Kaleshwar Rao and you talk to them both together on the letter and I hope that in 15 minutes you will find out who is a true son of Andhradesh and who a better votary of truth.

If you find you cannot come to any conclusions I would ask you to 'organise' a proper trial before the Andhra people. You could appoint as the 'judge' either Rajaji or Mrs Naidu, respected national leaders and NOT prejudiced against us. I guarantee an attendance of 50,000 peasants, men and women of all generations with their children and perfect discipline and order. Let Kaleshwar Rao make the 'Prosecutor's speech and produce his witnesses. Sundarayya will produce no witnesses but only make a speech. And let the 'Judge' record for you the verdict of the 'jury', the people who gave birth to both Kaleshwar Rao and Sundarayya.

What has hurt me most in his letters and your sending it to me is where he challenges our sex-morals. I would like you to know that it is only in our Party that we seek to guide, criticise and mould the entire life, both personal and political, of our members. The punishment inside our Party for sexual depravity is summary expulsion. I would also like you to know that we have perhaps a higher percentage of women in the Party than there were even in the Congress itself and that we have a larger number of women whole-time workers from elderly Mas to

young unmarried girls than the Congress ever had. I hope you will now see that when any slanderer attacks our sex-morals we feel as strongly as a common person will when he hears his mothers and sisters filthily abused.

What worth should be placed on Kaleshwar Rao's statement and how reckless he is in his allegation can be seen from his total distortion of Engels' book. Engels' book 'Evolution of Family, Property and State' is a scientific study of the history of human marriage and the development of property and State. In it Engels, who with Marx was the co-founder of Communism shows how historically marriage has tended to be more and more monogamic and how the earlier forms of marriage were discarded by society in its progress. In this connection he mentions Community marriage as a form which once existed in the infant period of human society. To allege that Engels justified Community marriage is a base perversion, for which it is difficult to find parallel. At this rate any historical research will be impossible. Engels, on the contrary, laid it down that the progress in human marriages is registered by its evolution as a monogamic marriage — a statement which gives the lie to Kaleshwar Rao's distortion about Community marriage.

Wavell paid tribute to your 'intelligence', 'experience', and 'acumen' and recognised 'much ability and high mindedness' in those who represent the Congress. You rightly answered back that why then does he not trust you.

You write to me 'I know your worth. You have very able young men and women, as selfless as I would claim to be. You are all hard-working and possess great energy and you impose strict discipline on your workers. All this I prize and admire'. And just as Wavell does to you, you don't trust my word over issues that in any decent society are taken for granted.

Please realise what I must be feeling inside me when I find that you treat me and our Party in the same way as Wavell treats you and the Congress.

Secondly, have you ever cared to recall the words of the Communist delegates in the historic August A.I.C.C. meeting? What did they beseech you to do? To delete the operative clause (the sanction clause) and replace it by acceptance of self-determination and immediate negotiations with the League; this in fact is just what you have done NOW.

What did they warn against? Just what happened immediately after your arrests what they had forecast in their speeches and what you repudiated the moment you got the chance from within the jail itself but which the people outside did not know. You repudiated sabotage from within the jail, we fought against it outside, when all those who swore by you had been swept off their feet. You asked Rajaji to go ahead with Jinnah and without knowing anything about your acceptance of the formula we popularised self-determination and Congress-League unity when the majority of Congressmen and Leaguers themselves lacked faith.

In conclusion, I did not answer this letter earlier because I was expecting you in Bombay. I did not send it as soon as you reached here because I did not want to intrude upon you time when we want you to give your single-minded attention to bring about an agreement with Mr Jinnah. I am, therefore, sending it on what is reported to be the last day of your talks with him.

I want you to read this letter at your leisure. I am writing to you for the last time on the subject of our bona fides. It is too humiliating to read what you send us and we see no reason why we should put up with it after having bared our breasts before you.

I will make to you an offer which in normal conditions we will consider below the prestige of our Party to suggest. You place your whole anti-Communist file before any patriot of eminence who inspires mutual trust, e.g. Mrs Naidu, Rajaji or Bhulabhai. These three are

your old colleagues and known to us not to be prejudiced against us. Let me have a copy of the file and let them ask me for explanations on any point. I am sure after reading their report you will consign the anti-Communist file to flames.

I hope you will agree that I could do nothing more to convince you.

I expect an answer to this but if you are not satisfied, I hope you will at least spare us the silly stories that petty slanderers for political reasons send you. If you want our views on any political issue or you want us to undertake any particular service of the people you have only to send the word.

The more we find you failing to discharge your duty towards us as the nation's father, the harder we shall work to discharge our duty as the nation's sons. And one day, we shall have your blessings.

I hope you know that we do not have personal capacity inside the Communist Party. The letters that I have written to you have been written on behalf of the leadership of our Party which we are proud to say knows no factions and cliques.

With respectful greetings,

P.C. Joshi.

1. Ms Kalpana Dutt, whom P.C. Joshi had married, was a revolutionary in the Chittagong Armoury Raid of April 1930. — Ed.

141: Extracts from Fortnightly Report from Punjab for the first half of September 1944

File No. 18/9/44 – Home Poll (I)

[NAI]

(d) *Communists* — The communists have made little headway among the main political parties which generally mistrust them, while the rural classes find their political theorising too intricate to understand. Congress has never forgiven them for their opposition to the 1942 disturbances and their pro-war policy, and sees behind their support of the Congress demand for the immediate formation of a national Government a thinly veiled threat of infiltration and capture of power. The Muslim League tolerates them so long as they champion the Muslim right to self-determination, but doubts their sincerity of purpose. To the Akalis they are anathema.

The Communists have been heavily pre-occupied with propaganda to support any Gandhi-Jinnah settlement, whatever the cost to the Sikhs and other minorities. A so-called Congress conference held at Amritsar August the 10th to re-affirm the confidence of the Congress in Gandhi's leadership was two thirds Communist and was boycotted by the Congress *Akalis*. The proceedings showed that the genuine Congressmen present had little faith in the Communists' sincerity. Again, a 'Sikh Congress men's' conference held at Amritsar on August the 11th to declare their faith in Gandhi's leadership consisted almost entirely of Communists and was chiefly noticeable for its bitter criticism of the Akalis. It is of interest to note that although the main resolution passed at this second conference proclaimed full faith in Gandhi's leadership, the organisers felt compelled in deference to Sikh feeling to qualify it by a request that Gandhi should consult nationalist Sikh opinion before committing himself to any final

settlement threatening to divide the Sikhs in two. The main results of these two conferences are that the already heavily strained relations between the *Akalis* and Communists will be still further embittered and that the Communist Sikhs will be drawn closer to Congress. Other Communist meetings held during the fortnight have followed the line of the two Amritsar Conferences; speakers at them have also taken the opportunity of trying to popularise the annual Provincial Kisan conference to be held in the Jullundur district at the end of this month, and as usual have exploited local grievance in the hope of stirring up discontent.

142: Extracts from Fortnightly Report from Punjab for the second half of September 1944

File No. 18/9/44 - Home Poll (I)

[NAI]

In accordance with their policy of not forcing a clash with Government before consolidating their power the Communist leaders were generally careful to keep within the law in their speeches, but there was much hard hitting in their attacks on the *Akalis*, the Unionist Ministry and the Police; and their speeches afforded clear evidence that as their power grows the Communists are becoming more outspokenly anti-Government. Short of actual sedition, no pains were spared to undermine the confidence of the people in the Unionist Ministry and the present system of Government, and to exploit local grievances, such as the failure of Government to construct a canal in the Doaba, shortage of iron agricultural implements, cement, kerosene oil and sugar. Popular interest, in the proceedings was also stimulated by hide-shows and dramas staged by women Communist workers, depicting scenes from Russian guerilla warfare and the Bengal famine. No attempts were made to defy the Government prohibition on camps, military uniforms or parades, and there was no anti-recruitment propaganda. Fascist aggression was denounced but the part played by the British in winning the war was deliberately belittled and at times slanderously misrepresented. Throughout, the emphasis was on Russian achievements, and the Soviet system of Government was extolled as the model to be introduced in India through the efforts of the workers and peasants. British Imperialism came in for its usual castigation, Speeches were otherwise mainly directed towards virulent attacks on the *Akalis*; persuading the audiences that only a 'national Government and complete independence could solve India's food problems and make her resistance to foreign aggression effective; advocating the right of self-determination for Muslims but rejecting it in the case of the Sikhs, and preaching communal unity and the necessity for a Congress-League understanding. The attacks on the *Akalis* have left no room for any reconciliation between them and the Communist Sikhs, and the cleavage must now rapidly widen. The Akali Jubilee Conference to be held at Jandiala in November will show which of the two parties has the stronger hold on the Doaba Sikhs.

Although the audiences were mainly illiterate and unable to follow many of the arguments put forward in support of the theories and proposals advanced and to that extent the effects of the conference are likely to be ephemeral, the general trend of the speeches must have left behind a feeling of disrespect for the Government in power and discontent with prevailing

conditions, methods of administration and civil supplies, and have added to the power and popularity of the Punjab Kisan Committee. This accretion of power is likely to stand the party in good stead after the war when it is prepared to measure its strength with Government on a falling market during unsettled post-war conditions.

143: Extracts from Fortnightly Report from U.P. for the second half of September 1944

File No. 18/9/44 – Home Poll (I)
[NAI]

There was a meeting of about 600 Communists at Lucknow on September 9, at which *inter alia* the differences between the Communists and the Congress were discussed, but apparently little or no headway was made towards settling them.

144: Extracts from Fortnightly Report from Madras for the second half of September 1944

File No. 18/9/44 – Home Poll (I)
[NAI]

In Madras, the Communists have been included in a committee formed for celebrating Mr Gandhi's birthday with Mr K. Venkataswamy Naidu as President. This has provoked anti-Communist organisations especially the Indian Students' Congress, to form another committee for the same purpose under the presidency of Mr Muthuranga Mudaliar and both committee have arranged for meetings and processions between 2.10.44 and 8.10.44.

145: Extracts from Fortnightly Report from Madras for the first half of November 1944

File No. 18/11/44 – Home Poll (I)
[NAI]

Communists – Communists appear to be greatly perturbed at the attempts now being made by Congress leaders to exclude them from any participation in their activities. In Madras City, Congressmen are making determined efforts to wean labour from Communists influence. At a Committee meeting of the Tramway Workers which was attended by Mrs Rukmani Lakshmipathi and other congressmen, allegation were made against the Communists that they had misappropriated the Union Funds. Tramway Workers are shortly to decide by a secret ballot whether the Communists should be allowed to remain in the Union. Communists, on

the other side, are continuing counter propaganda, and in one case in Malabar there was an open clash, when they broke up a meeting of Congress supporters at Badagara. They are also continuing their efforts to promote Hindu-Muslim unity and to bring about another meeting between Mr Gandhi and Mr Jinnah. The 'Russian Revolution Day' which was celebrated recently gave them an opportunity for processions and meetings.

146: Extracts from Fortnightly Report from Punjab for the first half of November 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

(d) *Communist* - There has been no marked Communist activity since the Jandiala conference at the end of September, but Kisan workers have maintained their steady pressure in the central Punjab district to strengthen the party organisation and weaken the *Akalis*. Meetings held to celebrate 'Unity week' and 'Revolution Day' attracted little attention. Work on the Labour, Student and food fronts has almost ceased, membership figures, sales of party literature and the collection of funds have fallen off appreciably. On the political front the old disputes between the Kirtis and Communists over funds, particularly the Desh Bhagat Qaidi Parwar Sahaik Committee funds from abroad, a vacillating Sikh policy and inability to convince any of the major political and communal parties of the Communists' sincerity have prevented any progress, and it seems probable that Dr Adhikari will again be sent to the Punjab to try and resolve these difference. Meanwhile no change in Communist policy is likely to follow the C.P.I. meeting at Bombay, as it is realised that the party is not strong enough to come into conflict with Government and that it has little popular appeal outside the Sikh peasantry. Propaganda may, however, assume a more definitely anti-Government and pro-Congress line, while in view of the improvement in the war situation the Party's 'pro-war' policy will probably be gradually discarded in an attempt to appease Congress.

147: Extracts from Fortnightly Report from C.P. & Berar for the second half of November 1944

File No. 18/11/44 - Home Poll (I)
[NAI]

The Communist organisation in Nagpur is being overhauled by B.T. Randive of Bombay. He is reported to have ordered the dissolution of the Central Provinces Communist Party on account of its ineffectiveness. The Nagpur communists have failed over a long period of time to gain control of the Nagpur Textile Union which is firmly in the grip of the Ruikar group. It seems likely that the party will now lose what little influence it had in the past.

148: Extracts from Fortnightly Report from Punjab for the second half of November 1944

File No. 18/11/44 – Home Poll (I)

[NAI]

(C) *Communists* – Demoralisation persists as a result of the failure of the Gandhi Jinnah talks and the attacks on the Party from different quarters, and Communist stock at present is low. Dr Adhikari who recently spent 10 days at Lahore found it impossible to reconcile the pro-Pakistan policy of the CPI with the need of the Provincial Organising committee for retaining its hold on the Sikh peasantry. The virulent attacks of the *Akalis* on Communism in all its forums seem to have convinced party leaders of the futility of trying to penetrate into the *Akali Dal* and to have persuaded them that their only hope of winning Sikh support is to open a unity campaign and rally the Sikhs on the question of nationalism. Adhikari has, however, realised that a more practical policy is necessary to reconcile Sikh-Muslim differences and has announced another visit to the Punjab to try and solve the problem.

In the wider sphere of provincial politics the only common ground which the Communists at present share with Congress and the League is opposition to the Unionist Party. The propaganda front shows signs of mismanagement and the *Jang-i-Azadi* has little appeal and is running at a loss. Party unity has been still further complicated by internal dissensions and accusations of the embezzlement of funds.

149: Extracts from Fortnightly Report from Bombay for the second half of November 1944

File No. 18/11/44 – Home Poll (I)

[NAI]

Under the auspices of the Cultural Society of the Friends of the Soviet Union a meeting of 700 persons was held at Ahmedabad on the 9th November. In his presidential speech, Mr Rajni Patel *inter alia* suggested to Mr Jinnah that he should clarify the position of the Muslim majority provinces vis-a-vis with other provinces in India and urged Mr Gandhi to concede the right of self-determination to the Muslims.



150: Extracts from Fortnightly Report from Madras for the second half of November 1944

File No. 18/11/44 - Home Poll (I)

[NAI]

Communists all over the Presidency seem to be perturbed at the attitude adopted towards them by these Congress Assemblies. Leading Communists of Madras and representatives of the districts recently met and discussed the future programme of the party in the light of these differences though no definite conclusions appear to have been reached. In some places as already reported, they have already come into open collision. In Kistna there was a scuffle between a Communists and an orthodox Congressite at a meeting held at Gudivada. In Malabar, there have been clashes already at various meetings and the district authorities are taking action to control such meetings by licences under the Police Act. It is reported that at a Calicut public meeting a Communist heckled the Congress speaker on his refusal to answer the question whether the civil disobedience movement of 1942 was launched by the Congress and if not, why he was blaming the Communists for not helping the Congress in the 'fight for freedom'.

151: Conclusions reached at the Commissioners' Conference, Bengal on the morning 20.12.1944.

Govt. of Bengal (Home) File No. 533/44

[Bengal State Archives]

1. *General Political Situation*

Subversive organisations admittedly quiescent and largely hampered owing to the detention of leaders – such detention to continue until the Japanese are out of Burma. The organisations are, however, not paralysed and are still capable of making mischief.

Communist activity is the main problem both in the labour as well as in the agricultural field. The only method of control is counter-propaganda emphasizing the activities of Government, and equal firmness should be shown in dealing with C.P.I. agitators as with agitators of other parties.

No general C.P.I. programme or policy discernible in the mofussil and their activities are purely opportunist.

Suggestion was made by certain H.M.s that the only possible organisation to counter Communist activity (which, it was accepted, would come in conflict with Government after the war) was the Muslim League and that therefore the Muslim League should be encouraged.

Present instructions of Government enable officers to encourage all supporters of Government when holding meetings.

Other points touched on by H.C.M.:

- a) Need for observing Government orders in regard to the playing of music before mosques in order to prevent communal incidents.

- b) Necessity for stamping out corruption; and
- c) Inadvisability of local officers passing local orders to control prices in their districts were not pursued in discussion.

It was essential to ensure that Chaukidars and dafadars were paid promptly in full and at short intervals.

Any increase in the Union Board rates to meet the increased cost would be unpopular, and the additional cost involved should be borne by Government.

3. Adoption of *H.M.I.S.* 'Bengal' or some other craft by the Chittagong Division or more correctly to consider the question of adoption by administrative Divisions or areas in the Province of ships of the R.I.N.:

The proposal was not favoured, it being considered that the arrangements now made by the Bengal War Purposes Fund were sufficient.

4. Future of the Home Guard organisation after the war:

It was generally agreed that, now that the block grants system for services rendered had been accepted, it would be impossible to maintain the organisation on a voluntary basis after the war.

The Home Guards should be regarded as a war time organisation and should be disbanded within six months after the war.

The Director of Training and Organisation suggested that if the Youth Welfare Scheme of the Education Department was not starved of funds, it could cope with all the social service work that was necessary and the Home Guards would not be necessary for this duty.

2. A. Training of A.R.P. Personnel for War Employment

(1) The following suggestions for employment of A.R.P. and Civil Defence Personnel were made:

- (i) Utilisation of *B.F.S.* units and ambulances in mofussil towns – both organisations to be under the Police;
- (ii) Utilisation of portable trailer to assist in minor irrigation schemes.
- (iii) Utilisation of Casualty personnel in F.R.E. hospitals;
- (iv) Utilisation of A.R.P. drivers in the numerous posts open to them;
- (v) Recruitment to the Police;
- (vi) Employment under the Civil Supplies Department -- Enforcement Branch.

B. The question of the desirability of a reduction of A.R.P. in the Chittagong Division was raised by the Chittagong Commissioner – a reduction which, he mentioned, had the support of the Third Tactical Air Force. It was considered that the views of that Force should be represented through the correct channels to G.H.Q. and the Government of India.

Commissioner, Dacca Division, pointed out that in his view it was more desirable to retain A.R.P. in Mymensingh than in Dacca, Narayanganj.

P.D. Martyn

21.12.44.

VI Role of the Radical Democratic Party

As mentioned in the main introduction, the activities of the R.D.P. is not one of aggressive opposition to the Raj. Historically it would not be worth considering it at all in a volume of this nature, were it not for the following considerations: the intellectual and political prestige enjoyed by M.N. Roy among the younger generation of Indian leftwing nationalists and labour leaders, because of his earlier revolutionary career and activities in the Comintern, till his return to India in 1930; the coming together of his supporters under the banner of a political party in 1940, with a strong anti-Fascist commitment, and the continued hold his supporters had over sections of Indian organised labour (Ch. X).

The survival of the party and its propaganda organs was as much due to the dedication of its younger cadres as to the indirect financial assistance it received from the Government. Documents No. 10, 15 and 32 show it as a supplicant before Government officials and British companies for advertisement and financial aid to the periodicals it was bringing out. Its local influence was very uneven (Docs 19, 25 and 29), although it was working hard to tune up its organisation and reach out to different areas (11, 12, 14).

Unlike the C.P.I., which accepted the existing political parties (Congress, Muslim League, Hindu Mahasabha etc.) as institutions which had come to stay and whose involvement in the political process was necessary for further progress towards freedom, the underlying message of most of M.N. Roy's leading articles in *Independent India* was that these parties represented the privileged classes, that the R.D.P. should try to mobilize popular initiative, develop its own political and economic programme, and try to occupy the space held for a long time by the Congress. (Docs 4, 16, 21, 36). Roy did not share the widespread reverence for Mahatma Gandhi, a fact which comes out clearly in Documents 3 and 4. The economic ideas of the R.D.P., and its position vis-à-vis the 'Bombay Plan' (Ch. XII) and the Indian Government's plans for post-war development are to be seen in Documents 5, 13, 21, 31.

Their political programme (part of Doc. 13) envisaged a federal democratic state for India reorganized on ethnic and Linguistic Lines, and in that they hoped to find an answer to the communal demands for Pakistan. In the context of Bengal politics they were taking up the grievances of Muslims who complained about inadequate job opportunities in the A.R.P. and similar departments of Government; this brought them in opposition to the progressive Coalition Party of Fazlul Haq. (Docs 1, 2).

Other Documents Relevant for this Chapter

1. Doc. 107 in Chapter I-B
2. Doc. 75 in Chapter I-C
3. Doc. 92 in Chapter II
4. Doc. 144 in Chapter II
5. Doc. 23 in Chapter IV



1. Govt. of Bengal to the Govt. of India – Publication of *Azad* forfeited

File No. 33/9/43 – Home Poll (I)
[NAI]

Government of Bengal
Home Department Press
No. 1083-pr.

From
A.E. Porter Esq., C.I.E., I.C.S.,
Additional Secretary to the Government of Bengal.

To
The Secretary to the Government of India,
Home Department. Calcutta, the 17th December 1942.

Sir,

I am directed to forward a copy of a notification issued by this Government declaring the publication, the particulars of which are given in the margin, to be forfeited to His Majesty.
(*The issue of the Azad dated the 3rd October 1942.*)

2. A translated copy of the objectionable article is enclosed for information.

I have the honour to be,

Sir,

Your most obedient servant,

Additional Secretary to the Government of Bengal.

Enclosure

Azad (Calcutta) dated 3rd October publishes of letter in which following lines occur.

Injustice in Chittagong A.R.P.

85 Per cent of the inhabitants of Chittagong are Muslims. The position of the Muslims in A.R.P. services is really negligible and disappointing. It will be seen from the following list that every notable post has been monopolized by Hindus in spite of there being suitable Muslim candidates. (Here follows a list). The communal officers mentioned in the list had so long given the bluff that suitable Muslim candidates were not available. But only recently it was noticed at the time of interview for the post of a Fire Brigade Instructor that quite suitable and qualified Muslim candidates were available. Almost every branch of the A.R.P. services is conducted by Staff Officer. Next to the post of the A.R.P. Officers, that of the Staff Officer is most important. But unfortunately out of five Staff Officers only one happens to be a Muslim. When one is reminded of the efficiency and experience of some of these Staff-Officers, one is surprised how these men could get such responsible posts. On the other hand although

there were quite suitable Muslim candidates for these posts they have not been appointed. What can it be called other than communalism? As regards the Control Centre, with the exception of three men all the employees of this branch are Hindus. This Control Centre is run by this Staff Officer (communication). As regards wardens Service, in this branch there are five Deputy Chief Wardens in five different wards. Three of them are Hindus. The duties of the Deputy Chief wardens of 'A' and 'O' wards are to find fault with the Muslim Wardens quite unnecessarily and thus seeking to drive them away. The post of the Deputy Chief Warden of the 'D' ward is a salaried one while those of the other wards are honorary. We are at a loss to understand why only his post is a paid one. In this way the demand of the Muslims is being neglected in every branch. When the post of the Head clerk fell vacant, we do not know why an inefficient junior Hindu was appointed to act temporarily although there were efficient and experienced Muslim candidates. Such differential treatment is quite unjust and unfair. The Civil Defence Department has surpassed all. The officer, the claims officer, and all clerks and peons of this department are Hindus. Very good arrangement has been made so that there may be no Muslim in that Department. In this way Ramraj is going on undeterred in every branch of the Chittagong A.R.P. Services.

1 Not printed

2. M.N. Roy* to Reginald Maxwell – Suspension of the publication of the Bengali Daily *Azad*

File No. 339/43 – Home Poll (I)
[NAI]

Sir Reginald Maxwell
New Delhi

Dehra Dun, December 19, 1942

Dear Sir,

You may have already looked closer into the affair of the Bengal Ministry ordering the indefinite suspension of the Bengali Daily '*Azad*' published from Calcutta. On the basis of very reliable information, I am in a position to state that it is a case of gross arbitrariness on the part of the Ministry dominated by the Hindu Mahasabha and Forward Bloc. You may be informed that the permanent officials did not approve of the measure. I understand that the Secretary of the Home Department felt that the matter should be left to H.E. the Governor. But the Home Minister hurriedly passed the order and left for Delhi without consulting His Excellency.

The entire Hindu nationalist press of the province was backing up the dubious policy of the Ministry. '*Azad*' was the only exception. It was rendering immense help to our activities. Through its intermediary, we have been able to get in close touch with the Muslim masses and influence them very largely. That may have been one of the reasons for this arbitrary action of the Ministry.

The facts stated in the letter for publishing which the paper has been suspended, are not solitary events. They are very common in Bengal recently. We have time and again publicly

said, and drawn the attention of the officials to the fact, that the supporters of the present Bengal Ministry, if not the Ministers themselves, are not politically reliable, and that with the influence of the Ministers unreliable elements have been penetrating Civil Defence and other organisations.

The suspension of the '*Azad*' is bound to incense the feeling of the Muslim population, and the consequence may be violent outbreaks of communal animosity. Therefore, for more than one reason, the order should be revoked, and I am sure you will look into the matter and do the needful to prevent greater mischief.

I may avail of this opportunity also to inform you that recently H.E. the Governor granted an interview to some of the leaders of our party, who brought to his notice various acts of questionable behaviour on the part of the Ministry and its supporters. On that occasion, the representative of our party expressed the opinion that the present Bengal Ministry must be replaced by more reliable public men. We have expressed that opinion publicly as well. The '*Azad*' was co-operating with us to secure public opinion in favour of this change in the Bengal situation. That, I am sure, is real cause for its suspension.

Yours sincerely

M.N. Roy

Enclosure

Daily Digest
21-12-42

According to a source report, the working Committee of the Bengal Provincial Muslim League at a meeting held on December 17th agreed that agitation in connection with the ban on the Muslim Bengali daily '*Azad*' would start with effect from December 24th, at every place the proper authorities would be approached for permission to hold a meeting if permission were refused, they would proceed with the meeting till the speakers and conveners has been arrested; they would then organise fresh meetings at the places where arrests has been made; If violent methods were used in dealing with the meetings, there would be violence in retaliation but Muslims must not take the initiative in using violence; Sir Nazim-ud-Din would be the first Dictator and would nominate his successors on the day the movement started.

3. M.N. Roy to Ram Singh – R.D.P. line on Gandhi's
fast

M.N. Roy Papers – M.F. Roll No. 28
[NMML]

Bombay, February 16, 1943

My dear Ram Singh,
Enclosed herewith some report from Kamta. He seems to be doing quite well there. Something

appearing in the paper will encourage him. Therefore, do prepare a news story out of the enclosed matter.¹

I received your letter in Calcutta, but could not reply owing to great rush. The visit there was quite successful, although no immediate result can be expected.

I have seen two issues of the Daily since the fast started. There is nothing more to suggest about it. We should hammer the point that the political settlement pressed for will mean transfer of power to the upper classes, which will not mean freedom for the Indian people. We should further condemn the method of confusing political issues by raising the humanitarian cry for the Mahatma's life. It will be interesting to publish a list of the organisations which ushered in with protest resolutions from the very beginning. More than lesson should be driven home. It may also be useful to give quotations from some of the old pronouncements of the Mahatma by way of reminding. They must be well chosen. None with any loophole should be taken. It will be very helpful if you could find Mashruwala's article in the Harijan' written just about the time the movement started.

You may seek an interview with the Home Member (just ring him up and tell who you are) in order to ask for some sensational matter which could be published at the time of the leaders Conference. He may like the idea. An interview may also be sought with Sarkar and Aney with the object of asking if there is any foundation for the rumour that the Indian Members of the Executive Council disapprove of the policy of the Government, or may even resign on the issue.

Now I must write about a personal matter, I mean your eye operation. If you wish to have that done here, that would involve your absence from Delhi for a couple of weeks. I am afraid during these days that is not desirable. Therefore, I suggest that while you will be coming here for the Secretariat meeting, you shall have yourself examined by a good specialist here and if an operation will be necessary that will be done perhaps at Delhi a little later when Karnik will be at Delhi. The state of the Management of the paper gave me a terrible shock. Now I don't want the editorial side also to get into a mess. Therefore I don't want you to be absent before Karnik can come and take your place.

As you did not give any address, we could not trace Bajpai in Calcutta. But we saw him accidentally in a very bad company in the Coffee House. The Company was composed of Mohan Singh and Sudhin Pramanik and several others of the kind. On enquiry, I come to know that he spiritually belongs to the company, and is seen with them frequently. Therefore, we shall have to rule him out. You must be looking out for a different man. Meanwhile, Dabral should not be allowed to go away.

As regards an additional man for the editorial staff, when we shall weigh the larger size, I came across a man who could be very suitable. For the moment, he is acting as the editor of the Orient Press in Calcutta. He politically agrees with us fully, and is eager to work with us. I don't think he would want any fancy salary. However, in case, we need him, we can ask Sinha to enquire about this point.

Yours sincerely

M.N. Roy

1. Not printed.



4. Editorial in *Independent India* dated 14.3.1943 — 'A Definite View of the Economic Scene'

Independent India – Vol. 7, No. 11

[NMML]

The Mahatma fast is over. The apprehended tragedy was fortunately averted, and the Mahatma broke the fast 'in cheerful spirits'. He came out of the self-imposed ordeal successfully, but nationalism has sustained a political defeat. The object of the fast did not materialize. It was to bring out the Mahatma as a free man, to enable him thus to examine the situation *de novo*, to discover some face-saving formula to bring back the Congress from wilderness. None but the Mahatma can do that task; and he too can do it only as a free man. But he could not get the much-desired freedom.

The firmness of the Government in handling the situation must close the perspective of an 'easy escape'. Having called it once an act of 'political blackmail' (*himsa*) the Government naturally could not stage a climb-down. They had to stand, and they did stand the enormous pressure of the business community; the attacks of the so-called non-party leaders; and the desertion of three of their own members. The fast, though it led for some time to a serious confusion of the issues, has clarified the forces. The backbone of the nationalist strength, operating from behind the scenes so far, had to rush to the stage this time. The demand for the unconditional release of the 'Tapaswi' came from the most worldly of men – the mercantile community and the big business. The ties that bind together the Mahatmaic spiritualism with the worldly pursuits of the vested interests became sharply exposed. The demoralized public men also mixed their voice with the cry. But alas all that was of no avail.

The new experience thus learnt, must hasten up the process of show-down begun with the fast. Already it has come down from the so-called freedom of the country to the freedom of one man so that he may see things well and examine them anew. A further downward shift may mean a twist of the word 'freedom' or a modification of the adjective 'unconditional'. Developments in that direction can already be seen in the camp of those indefatigable leaders who are spoiling for reconciliation with a new sense of reality. Unable to get out of the impossible position in which it landed itself by its own actions, nationalism may now fall back on this 'second line of defence'. Its own strength could not be of much avail to the Congress in saving itself. The staking of his own life by the Mahatma even would not cut much ice. It is but natural, under these circumstances that it should mobilize its reserves. And the best reserves it can count upon are the big business along with the so-called non-party leaders without following. These now appear to be mobilising their strength not for freedom, not for securing the exit of the Englishman once for all, but for obtaining the release of the Mahatma. That may now be the war cry.

The characterization of these gentlemen as 'non-party' leaders is a misnomer. Many of them only the other day were noted leaders of the Congress. Others were one way or the other closely associated with it. Still others have been associated with one party or the other in their careers. A yet more important consideration is that all that they have ever said or suggested has been of the nature of pegging the entire political life of the country on to the Congress. There need not therefore be attached any weight to their judgment, any importance

to their actions. It is reported that some of them used the opportunity offered by the fast to get a glimpse of the Mahatmic mind. The isolation enforced by the conditions of imprisonment was broken for some time so that the disciples without could get some inspiration from within. This might enable them to plan better their show; but an empty show it must remain.

A more serious danger however may arise as a result of misunderstanding of the situation abroad. It is true that the opinion abroad was also left unaffected and cold by the Mahatmic 'tapasya'. But it is probable that it may encourage the tendency demanding the re-opening of the negotiations for reviewing the situation and making fresh attempts to solve the Indian problem. True, there are no indications from abroad to that effect; but these cannot be totally ruled out from what is happening in the country itself. It is therefore necessary to emphasise that the fast has made no difference whatsoever to the situation in the country. The situation remains the same as it was and negotiations as fruitless a channel as it ever has been.

The home front must be guarded against all these eventualities. The real danger in the near future will arise from 'nationalism' stooping to conquer; and its victory must mean the destruction of the hopes and aspirations of India's millions. It will mean nothing more than a perpetuation of their slavery for the toiling millions of the country and perhaps a more intensified and sinister form of exploitation because it would be exploitation by their own black men. The major responsibility for such an eventuality will rest with the Government, if ever it happens to arise.

By their bold and firm stand in the recent crisis, the Government has however furnished some ground for hope. But mere firmness cannot suffice; nor is it a guarantee against the future eventualities. Such a guarantee can arise only out of positive action calculated to undermine the strength of the forces that have so clearly and demonstrably operated against the interests of the people.

The recent turn in the military situation reinforced the need for such an action. There is no reason to be unduly optimistic, and still less for being complacent over the allied victories. But it will not be too much to maintain that a military defeat of the axis powers is now a matter of time. That being the case, it is natural that greater attention should now be directed towards the home front. Should the enemy within escape when the without is being smashed? Can an internal victory of those whose sympathy for the Axis powers is a proved fact, and who even tried to translate that sympathy into action, be consistent with the defeat of the Axis powers? Will that not amount to a mere relocation of the forces represented by the Axis powers and giving them a new lease of life while trying to defeat and destroy them? It is these questions that have to be answered by the Government when they think of victory in the War.

Winning the war must also lead to the winning of the peace. In order that may happen, the Government must cease thinking in purely negative terms and must set their mind on a positive policy promoting the welfare of the people. That alone will save India for freedom and democracy. Mere safeguarding of the home-front will not be enough. The home-front will have to be strengthened and reinforced to launch a strong and powerful attack against the people's enemies who are already striking all along the line. The real question therefore is; will the Government awaken to this task or will it still continue its muddling through and eventually sustain a defeat in its victory?



5: Editorial in *Independent India* – dt 28.3.43 (extracts)

Independent India – Vol. 7, No. 13

[NMML]

The Absurdities

In his budget speech, the Finance Member made the remark that an increase in agricultural prices meant a reduction in the burden of agricultural debt. Whether the present high price of food grains and other agricultural products is having that desired effect, still remains a controversial question. Replying to the budget debate, the Finance Member said that 'such indices as are available are sufficient to satisfy us that the position of the agriculturist is definitely much better than it was before. There is no question but that a certain portion of the high prices is making its way permanently to his advantage.' . . .

It is not a matter of opinion. The controversy will have to be settled with the facts of the situation, which can be ascertained. None, however, should disagree with the opinion that higher agricultural prices, provided that the benefit accrues to the peasantry, will reduce their burden of indebtedness.

In its memorable report on the problem of post-war reconstruction, the London Chamber of Commerce has indicated the following approach to that problem: 'It is now essential, if greater disasters are to be avoided, so to change the system as to ensure that international trade shall tend to raise the standard of living of the backward nations to that of the advanced nations.' Nevertheless, the British commercial community in this country does not seem to have as yet grasped the problem, and is therefore not able to realise the 'absurdities' of an antiquated economic system so graphically depicted and roundly condemned by the London Chamber of Commerce.

The leader of the European Group in the Central Legislative Assembly disagreed with the view of the Finance Member, and warned against 'the dangers inherent in increased purchasing power due to inflation'. If the report is true, then Sir Henry Richardson gave yet another evidence of the absurdities of a system which he is so very anxious to maintain, even at the cost of the interest he is supposed to represent. Let alone the question of agricultural indebtedness; the plight of the Indian peasantry may not be a matter of concern for the European businessman living in cities. But as businessmen, they should know that, if the Indian peasants can buy more, businessmen will be able to sell more; and that after all is the concern not only of traders, but of industrialists. Industries cannot prosper if trade is restricted by low purchasing power of the bulk of the consumers . . .

But the European commercial community in this country is not yet prepared to agree with the London Chamber of Commerce that 'there is something radically wrong with our economic system'. And therefore it cannot realise that 'it is absurd that men in want of the necessities of life should be denied the money with which to buy them'. Sir Henry Richardson is afraid of letting the Indian peasantry have a little more money, because that can be done only by allowing the price of agricultural commodities to rise. As a businessman, he should be able to see without any difficulty that more money in the hand of the peasantry will be a great impetus to trade. But he is obsessed with a more immediate concern which can be characterized

as short-sighted self-interest. If the price of food grains, which constitute the bulk of Indian agriculture product, go up industrial employers will have to pay higher wages, not as a matter of charity, but in order to prevent deterioration of labour, owing to insufficient nutrition. They are fighting shy of raising real wages, for their own interest, and are trying the make shift arrangement of granting generally inadequate dear food allowance. If the agricultural prices are stabilized on a higher level for larger economic considerations, the question of raising real wages of industrial labour must be eventually faced. That question seems to be haunting the commercial community.

This mentality makes all the talk about post-war reconstruction not only meaningless, but ridiculous. It assumes that cheap labour must always remain the foundation of industry in this country. In order to keep the price of labour on the lowest possible level, the general standard of living must remain below the civilized standard. That is the fundamental feature of what is called colonial economy – a system of trade built on the basis of surplus capital exported from industrially advanced countries, and consequently getting the backward countries into unpayable indebtedness. The London Chamber of Commerce has condemned that system as one of the absurdities of the nineteenth century economic system which assumed that 'the only proper object of an economic system was to produce the maximum of real wealth with the minimum of labour, and therefore looked to division of labour, carried to its extreme limit, not only as between people within the nation, but as between one nation and another'.

We have characterized that bold pronouncement as a condemnation of Imperialism. Nor is it a matter of inference. The Report of London Chamber of Commerce is more outspoken: 'It was palpably absurd that nations should be desperately anxious to export more of their real wealth to other nations than they received in return.'

If the export of capital, to get the backward countries into unpayable indebtedness, was absurd, it must be abandoned once it has been discovered as such. Consequently, the structure of Indian economy must change. It must cease to be colonial economy. It must seek another, more stable, basis than cheap labour. The British commercial community in this country does not seem to have realized that as yet. But how long will they ignore the fact that the ground has been cut under the system of colonial economy which they would still like to retain? After the war, the surplus of India's export trade, carried on by British firms, will be balanced by importing commodities. It will no longer be available as capital to be invested in India. The London Chamber of Commerce has accepted that as a principle to guide international trade after the war. Consequently, to increase the purchasing power of India, will be to the interest of the British commercial community, otherwise, India will not be able to accept increased imports to balance her surplus export.

That change in India's foreign trade will be a determining factor in her post-war reconstruction. But until now, all talks about post-war reconstruction have been rather vague. As a matter of fact, it is a rather loose notion. For India, there will be no reconstruction. India has suffered very little from the war, like other belligerent countries. Consequently, there will be nothing to reconstruct. It will be a process of construction – from the bottom up. The problem will be how to remove the absurdities which have been created by capitalism prospering under the war conditions.

In all the countries, modern industries developed on the basis of the capitalist mode of production. Imperialism prevented that development in India. As a matter of fact, it did not prevent the growth of capitalism; under colonial economy, capitalism could not function as a progressive force. Now Imperialism is removing itself. Colonial economy, therefore, should

also go. What can be called feudal capitalism is the characteristic feature of colonial economy. The essence of feudalism, whatever may be its superstructure, either agrarian or industrial, is to deprive the direct producer of his entire surplus product. Consequently, the vast bulk of the population remains on a very low standard of living. Unless Indian economic life will be freed from that stagnation, no construction will be possible. . . .

No plan of reconstruction will meet the realities of the Indian situation, unless it is a plan of large-scale industrialization. The success of the plan will depend on three conditions: Supply of labour, abundance of capital, and market. The first two conditions are evidently there. . . .

. . . Only the third condition still remains problematical, and that after all is the decisive condition. With the two conditions, commodities could be produced almost without limit. But they must be sold. Where is the market? Evidently, that question should also create no difficulty. A country with a population of more than four hundred million, and still growing rapidly, presents an inexhaustible market. But at present, it is only a potential market. The human demand is there. How to transform the human demand into effective demand? That is the fundamental problem of Indian reconstruction. The debate referred to in the beginning of this article shows that this problem cannot be solved within the limits of orthodox capitalism—that is, limitation of production to the existing effective demand, disregarding human demand.

In order to raise the standard of living of the bulk of the population, the feudal character of national economy must go. In a certain stage of history, capitalism operates as a progressive factor precisely because it frees society from the bonds of feudal economy. Therefore, if in India capitalism cannot raise the standard of living of the bulk of the population, it will have no social usefulness, and consequently it will create only new absurdities. One of them will be to raise the bogey of inflation in order to keep agricultural prices as well as wages low. That is already being done. On the one hand, Indian capitalists are complaining against inflation, and British commercial community is haunted by the imaginary danger of a high agricultural price. Between the two, they will create absurdities galore, and bedevil any plan of Indian reconstruction.

The alternative is not a headlong advance towards Socialism. It is planned production, according to needs, and the realization that trade has no other function than free exchange of commodities. All the three factors for India becoming a prosperous country herself, and contributing to the reconstruction of the world, are there. An economic system which would not permit the freest use of those factors is evidently anti-social, and as such should be discarded. Capitalism must be judged by that standard. The plan of Indian reconstruction should also be made according to that standard.



6: Governor of Bihar to the Viceroy (Telegram R, 6th April 1943)

Linlithgow Collection
[NAI - Acc. No. 2243]

Roy's Campaign against Bihar Officials

Immediate

No. 36. Can something be done by Home Department to stop Roy's campaign against Bihar officials in '*Independent India*'. I have had to make some changes as you are aware, but it is extremely embarrassing to me, and is thoroughly upsetting officers especially as it is generally known that Roy gets financial support from Central Government. I have suggested in my fortnightly letter that Roy should apologize in his paper for his attack on Stewart. I had thought of writing to Roy personally but finally decided this would be unwise.

7: The Viceroy to the Governor of Bihar

Linlithgow Collection
[NAI - Acc. No. 2385]

To H.E. Sir Thomas Rutherford, K.C.S.I., Governor of Bihar

*The Viceroy's House, New Delhi,
April 9th 1943*

My dear Rutherford,

Many thanks for your telegram¹ and also for the reference in your fortnightly letter to these messages about Bihar in *Independent India*.² I need not say how completely I sympathize with your criticism. On seeing the first of these articles about Stewart's resignation I spoke to Maxwell about it and asked him to get in touch with Roy. Maxwell did so and found Roy extremely apologetic. Roy explained, as I understand, that the article had been produced locally and that he had not been aware of it before publication. But he fully accepted the rebuke which Maxwell gave him.

2. I have now discussed the matter further with Maxwell who tells me that he had hoped (as I had myself) that his last conversation with Roy would prevent any further reference to these objectionable topics; and he has now written to him (without of course referring to the correspondence between yourself and myself) pointing out the undesirability of giving publicity to messages of this sort, asking him to find some way of disavowal and apologizing for them.

and asking also that he should let Maxwell know as soon as possible what he proposes to do. I will write again once I know the result of this move.

Yours sincerely,

Linlithgow.

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1. Doc. 6.
2. Not printed.

8. Governor of Bihar to the Viceroy – Reply to the letter dated 9.4.1943 (Doc. 7)

Linlithgow Collection
[NAI – Acc. No. 2385]

From H.E. Sir Thomas Rutherford, K.C.S.I., C.I.E.

*Governor of Bihar.
Camp, April 12th 1943.*

No. 246-G.B.

Dear Lord Linlithgow,

Thank you for your letter of April the 9th¹ about the steps being taken to choke off M.N. Roy. I hope Maxwell will be successful in getting him to make an apology in the paper. It must be a lie on his part that a full page head-line 'Story of a Governor's Fall' could appear without his sanction. Muhammad Yunus,^{*} who was Chief Minister in the Interim Ministry here, and is now associated with Roy in the National Democratic Federation has written him a strongly worded letter commenting on his bad manners and worse taste. One result is that the National War Front here will have nothing to do with a proposal of Griffiths^{*} that the agents of the Radical Democratic party should be let loose in the Villages for war propaganda.

Yours sincerely,

T.G. Rutherford

1. Doc. 7.



9. M.N. Roy to K.K. Sinha – Jharia Conference

M.N. Roy Papers – M.F. Roll No. 14
[NMML]

Dehradun, June 1st, 1943.

My dear Sinha,

Just received your long letter from Lucknow. I did not want the party conference to be postponed. During our conversation, I got the impression that you thought the time for preparations as very short, and it might be necessary to postpone. It seems that the U P comrades are going ahead with the preparations. Therefore the question of postponement at this late hour does not arise. No, the Jharia conference will also take place according to time table. By all means see that Jaipal Singh,* is invited to preside. Of course Homi should be also given an important place. He may be elected the chairman of the Reception committee. I have to Mr T. Williams about the Jharia Conference but no reply as yet. Anyhow I have written to him that some of our people will see him. So, if V.B. Karnik is there, he can just as well see him without any further delay.

Your statement on the Bengal situation is very good. Its circulation among party members is very necessary. But I felt that there are things in it which had better not been said publicly just when we are trying to have better relations with the Muslim League Ministry. On the other hand, such severe but perfectly correct criticism of the internal life of the party is also not better to be made publicly. The statement should have gone in the party letter. So, its delay in coming out has been unfortunate in more than one respect. But the printing arrangements in Delhi are simply impossible. I don't know what to do about it.

It does not seem to be any better in Lucknow either. It is taking nearly two months for the small book on Post-War Reconstruction to be printed. However, we shall go over all these matters in the next meeting of the Secretariat and try to make arrangements for the technical machinery to function more efficiently.

I also feel the need of a camp. As a matter of fact, I have already made up my mind to transform the next session of the Secretariat into an exclusive one, and being exclusive it need not last more than a few days. We may begin by the 25th and end by the end of the month, so that you will be able to return to Bengal after another month. I am really anxious about the situation there. Since your return Bengal has almost disappeared from the political geography of our party. Even reports for the Daily do not come. You must teach Nalinibabu not to ignore the Central Office, and I always like to keep personal touch with all important party organisations. The day before yesterday I wrote to Raja about it.

Nigam did not ask me anything about the new provincial Executive. So, I have not made any suggestions. The size of the Executive will be immaterial. But it may be large enough so that nobody need be left out to be dissatisfied. But the Secretariat must be very carefully chosen. It will not be advisable to exclude the Doctor as yet. The party is not yet sufficiently consolidated internally to stand discord and dissatisfaction which is bound to spread. I suggest that the Secretariat be composed of Nigam, Karlekar, Puri, Doctor, Gopi. Nigam's idea of

relinquishing responsibility is out of the question. And it is not necessary for A.M. to be included in the provincial Secretariat.

The political organisations resolutions for the Bengal Conference were not published in the I.I. because Karnik says they did not reach Delhi. I have never seen them. So, you should write to Calcutta to send copies immediately to Delhi for publication in the weekly. I do not think it is advisable for the Benares Conference to adopt any resolution on the C.I.¹ It is a serious matter, which has at her been until now refer light heartedly treated. You us have read my article in the weekly. It is going to be a series of five or six, which will serve the purpose of the pamphlet you suggest. The matter cannot be fully covered in a small pamphlet.

I do not quite understand what exactly you want me to write about organizational questions. I know there is a lot of confusion about it which must be cleared. We shall discuss the matter in the Secretariat meeting, and decide who should write and what. In any case, while the series of articles on the C.I. is being published, the weekly cannot have another signed article by me.

It was not suggested that Harilal, if he acts as the I.I. correspondent in Lucknow, should be introduced to the official circles as our man of confidence. I meant him only for reporting current news. The weekly political letter must be written by some of our own senior comrades. You shall have to find the suitable man.

Heartiest greeting from both.

Yours sincerely,

Communist International, whose dissolution was in May 1943 – Ed.

10: P.J. Griffiths to Roy – Regarding advertisements

M.N. Roy Papers – M.F. Roll No 28
[NMML]

*National War Front,
Railway Board Building,
Simla, 28th June 1943.*

Dear Mr Roy,

Many thanks for your letter dated 22nd May 1943 to Mrs Robinson.¹ The paper Economy Campaign, Food Economy Campaign and the Grow More Food campaign are already being published in the *Independent India* and advertisements of Defence Savings campaign will also be offered to that paper in the near future. I trust they will give you all the help you need.

P.J. Griffiths.

Not printed.



11. M.N. Roy to V.B. Karnik — Regarding articles for the weekly

M.N. Roy Papers – M.F. Roll No. 43

[NMML]

Dehradun, July 6th. 1943

My dear Karnik,

Everybody being sick here, there was some difficulty in sending off the post. Therefore, the matter for the Weekly may have reached a day later. But altogether four things have been sent until yesterday: The editorial, Sinha's article, the War and an article signed 'Diocles'

In addition to other things we have decided to publish, that Open Letter to Englishmen must be done immediately. It should include the editorial on 'Responsibility' written by you. The manuscript is sent under separate cover with specimen of the cover page. In one case, there will be no cover page separately; the text beginning on the cover. You will choose between the two. But the printing should be done as best as possible, also on best available paper. It can be an eight pages pamphlet of the size of the Party Letter. The manuscript will not need so much space. Therefore, quite large margins can be kept on the pages No. 10 type should be used.

I doubt whether it will be done soon enough at Delhi; in that case, it may be advisable to have the printing done in Bombay. The Popular Printing Press would do it very well, assuming the paper will be available easily. But if the printing is done in Bombay, the pamphlets would have to be despatched back to Delhi, from where the posting has to be done. They should be sent by post to individual addresses.

Please get a copy of the combined Civil Lists and write to the different European Associations for lists of their membership.

I have prepared the outlines of the curriculum for the trade-union camp. But I am afraid it will be difficult to find competent lecturers. Eight lectures have been sketched. They may have to be reduced to six, as the camp will not last longer than a week. I shall suggest tentative names, and you will revise the list.

Yours sincerely,

M.N. Roy.



12: A.K. Mukherjee to Roy — Work by Royists

M.N. Roy Papers — M.F. Roll No. 16

[NMML]

Indian Federation of Labour

*Faiz Bazar Road,
Delhi,
July 17, 1943.*

President,
Jamnadas M. Mehta,
Bar-at-Law, M.L.A.

General Secretary,
M.N. Roy,

My Dear Com. Roy,

Com. Karnik left for Jharia last night. On his way he is stopping at Jamshedpur for a day. From there he will go to Jharia with Coms. Shiopujan and V.G. Karnik according to the programme he made here, Com. Karnik should return to Delhi on or about the 23rd.

I am leaving for Lucknow tomorrow evening. I have been delayed here mostly because of the auditing of the Sharanpur Union accounts. The last date for submitting them to the Registrar of Trade Unions is July 31st. Unless I had the auditing completed before leaving this place, it would have remained in abeyance.

Jatin Babu must have written to you about the house which he has got. Now I hope it will be possible for Com. Karnik to establish his home. I could never believe before this that Karnik too was quite able to stand the strains of nomadic life for months.

We had thought that the Delhi Provincial Conference could be held at the time of the Tripartite Conf. Sadullah is decidedly of the opinion that no Conference can be a demonstrative success if it is held before the rains are over. His proposal is that the Conference should take place in October. By that time, he feels, it will be possible to make good arrangements including that of making the Delhi I.F. better organised and more representative.

So, we will have only the T.U. class at the time of the Tripartite Conf. Circulars regarding that have been sent to all provincial units of our party. To all provincial branches of I.F. of L. also a circular regarding that is being sent. The dates of the Tripartite Conference have not yet been announced. This, however, is expected to come off sometime in the last week of August or the first week of September. We can also have the C.E.C. meeting at the time. Mathur is arranging to have at least a good labour rally during those days.

Com. Ellen will have to take the trouble of sending here another copy of the syllabus for T.U. Class which you have prepared. Unlike his usual habit, Com. Karnik appears to have misplaced it. It will be possible to circulate it to different provincial Committees of I.F. of L. as well as the speakers — at an early date only if I come here early. It may be sent to Dhurve.

Khwaja came here a few days ago. Khan also had come here in those days — for some work of the N.W. Union. Khan has agreed to come here on the 20th again to open the Delhi

Office of the N.W.R. Union. At our suggestion, Com. Rauf had agreed to take charge of the Divisional work of N.W.R. We feel Rauf will do useful work here.

From what we gathered from Khwaja it appears that both Khan and Guruswami have pressed Mr Mehta to have the I.F. of L. executive meeting at Jamalpur. Karnik will find out how far it is there when Mr Mehta is here for the Assembly.

Regarding *Mazdoor-ki-Awaz*, I think it will be no good to alter the existing arrangements. Both Karnik and Ram Singh agree with me. Ram Singh has given some idea to Khwaja about the matter that should go in the paper. Khwaja wants to make the paper a political one. That, he thinks, will make it popular in Punjab and will be better, as no many railway workers are among its subscribers anyway. I told him that in view of the fact that the total amount of subscriptions at our disposal remains what it was last year, he should not expect any return in lieu of higher price of the paper. He does not seem to have gone dissatisfied. He likes the idea of going to the Tripartite Conference.

With greetings to you and Com. Ellen,

Yours sincerely,

A.K. Mukherji

13: Radical Democratic Party's Manifesto

M.N. Roy Papers – M.F. Roll No. 14 .
[NMML]

Think, Decide and Act

HERE is no bait for you, no attempt to hypnotize to act for any interest cattle-fashion. We do not believe that you intelligent educated people can ever be drum driven. That is why we do not propose to sound any. We have watched you over a long period of time with interest. We are convinced that your minds are continually troubled by the sorry state in which our country happens to be. Surely you are interested in ending it. You have earnestly tried for solutions. Your record of suffering and sacrifice is great indeed. But your achievement, if any, is not at once proportionate. That is what depresses us. We have all the time asked why? Now we suggest it to you to ask why? We invite you to think, to decide and to act. For that it is necessary to take stock of the situation.

Every political party, the Congress, the Muslim League, the Radical Democratic Party, the Hindu Mahasabha, the Communist Party and host of others, has a programme of its own. Widely differing from each other, they all claim to be offering a panacea from all evils from which the Indian People are suffering. They have their arguments too. There is thus this chaos of political thought on the one hand. There is, on the other hand, the absence of any objective standard of measure by which an average man who is interested in the solution of his problems, can judge for himself. Such a standard has, unfortunately, not been evolved in the course of our past political life. Naturally, therefore, we find people being tossed between high hopes and utter frustration, now inspired by the promises of a particular party, now depressed by

its performance. Depression does not stop there, it extends over the entire political life. And that is a very critical situation. It has become absolutely necessary that the average Indian should have an objective appreciation of the problems of society, as also the points of view of different parties which profess to be working for their solution. You may not take them on their words. Every hen thinks that she lays the best egg. But certainly you can taste and decide. You must therefore think, think for yourself and not by proxy.

It is the people's point of view and not necessarily a party's (unless it is a real people's party) that must be taken into account. For the people of India are not so much interested in the parties. They are concerned with their own problems, which are so vital for them. Therefore, party or parties professing to promote the welfare of the Indian people must have an objective approach to those vital problems. The Indian people will, in the long run, judge all political parties and movements from their ability to solve those problems from actual performance and not merely professions and promises. It is to be expected, however, that in the shorter run, emotions, sentiments, traditions and prejudices will guide (rather misguide) the people. Losing their constant attention of their problems, they are likely to base their judgements on these factors, as against reason or enlightened self-interest. This is more likely to happen with the broad masses that are culturally and intellectually comparatively backward. Therefore, the cardinal point for any political party sincerely interested in peoples welfare is its *Programme*, its solution of the problems. All other matters are secondary.

The Main Problem

This necessitates a clear grasp of the problems. What is the main problem of the Indian people then? If the Indian people mean the 99 per cent of the Indian population, the workers, the peasants, the urban poor, the middle-class, then the common denominator of their problems is *Poverty*. This is primarily an economic evil. So there must be something fundamentally wrong with our economic organization of society which creates this problem. Those fundamental defects must be found out and eradicated root and branch before the evil can be eliminated. That is, the entire economic structure of our society must be remodelled on radically different lines. But a constructive approach presupposes that first the cause must be clearly diagnosed and then from the analysis itself the alternative solution must be equally clearly formulated.

The Cause

The process (which is the cause in action) in which poverty is caused is something like this. The 95 per cent of the people produce wealth by working either on land or on industries. Land is the principal means of production. But here we are faced with the paradox that it is these producers, the toilers that are afflicted with poverty. This is because there exists a wide and complex economic system designed to drain away the resources of the people. This system has a great stranglehold on the people in various forms. Look around you closely and you will not fail to notice how it works. The landlord, the bania, the mahajan — they all form a compact brotherhood for the exploitation of the people. The system of bribery whether to the representatives of the state or of God, litigation, transport, traditional social customs, are all different channels of the same system to drain away the wealth of the people who are the producers. And all these forms, mark, have their proper sanction, some legal others moral. This is true of the entire country. It may express itself differently in towns and villages, but it is there wherever you go. *and this is the cause*. If *Poverty* will be removed, this entire superstructure on which the present social system stands has to be blown out of existence. It

must be. There is no alternative. Alongside of this rapid industrialization is necessary because only then consumable commodities may be produced in plenty, so that the people with need and with increasing purchasing power obtained through an agrarian revolution may be able to obtain those goods. In brief, therefore, we note below concrete alternative principles of our economic organization that are urgently necessary for progress and prosperity.

1. The land as well as the underground riches are the collective property of the nation.
2. Promotion of productivity of labour through the introduction of modern mechanical means of production is the responsibility of the State.
3. Heavy industries and banks are subject to State control.
4. Cultivators are entitled to hold land, without any disability, subject to the payment of a unitary land tax. Small agricultural producers are to be free from all other taxation except localities.
5. Promotion by the State of large scale cooperative agriculture through the supply of modern machinery and cheap credit.
6. An irreducible standard of living for all labouring in fields, factories, mines, transport, offices and schools, to be guaranteed by a minimum scale of wages.
7. Employment or relief is a right of citizenship.
8. Nobody shall labour for more than six hours a day, for six days a week, and every worker shall be entitled to one month's leave with full pay, and women workers to three months maternity leave.

We do not suggest that we have said the last word. It may need alteration or revision as the facts or reason may demand. Constructive approach in this case will be to study and analyse and point out the defects and then to offer new alternatives. But till the time this is done, the analysis and suggestions given above naturally stand correct.

Political Problems

Similarly there are political problems — problems of communities, of the form of state and the nature of people's control over it, the problem of culture, etc. All these aspects have to be studied on the same objective level and concrete alternatives will have to be formulated. It may be here pointed out that most of our attention is taken up and differences of opinion arise on these scores and this tends to keep the problem of poverty, the primary problem, in the background. We claim to have studied these aspects as well dispassionately and here we place before you our concrete formulations.

9. The Supreme Sovereignty belongs to the people, to be exercised through the direct control of the executive as well as the legislative functions of the State by the elected representatives of the people.
10. The Federal Democratic State of India is to be composed of a number of Autonomous Republics built on the basis of linguistic and cultural homogeneity as far as possible.
11. All the component parts of the Federation are to have a uniformly democratic constitution.
12. Promotion of public health and sanitation is a charge of the State.
13. Free and compulsory secular education for all children upto 16.
14. Freedom of Press, speech and association to be constitutionally guaranteed for all but the enemies of the people.
15. Fulllest freedom of religion and worship.

16. Identical rights and responsibilities of citizenship for men and women.
17. Protection for the rights of minorities through proportional representation of public bodies.
18. Complete cultural autonomy.

People's Freedom

Now this gives a complete and concrete picture of the solution of most of the burning problems of the people. If this is an objective and scientific solution, as we claim, all other programmes or solutions must be tested on this standard. Up to this time we had the programme of a party, but now we have a programme of the PEOPLE. Freedom thus gets a concrete shape, which masses can visualize and for which they can be inspired to fight till it is attained.

Postwar Period

Assuming the defeat of the Axis in this war, there seems to be a possibility of a transfer of power to India. The British Government has in this period been too much committed to transfer power to India. It now poses the question to Indians to devise an agreed constitution for India and the power will be immediately transferred. Even otherwise, the problem of attaining a peoples Freedom remains, irrespective of the attitude of the British. The supreme task of the moment is thus to formulate the principles of the New Indian State which will promote the welfare and progress of the people. What can those principles be if not those enumerated above. Once these principles are formulated, the next task will be to ask the people to express their opinion as to whether these principles will solve their problems or not. By people we mean actually the broad masses in villages and towns, not merely political parties and newspaper controlled by vested interests. So that behind these principles stand the people, irrespective of the attributed of any or all parties.

Sovereignty belongs to the people and not to a combination of parties. Once this popularization of peoples freedom is done among the masses, Power can be attained or transferred to the People together with only such parties as fight for these principles. Only then a peoples movement for freedom shall grow and take its rightful place by virtue of its right and organised power. Only then a Peoples Government will be established to ensure the full execution of the programme.

The Concrete Task

We have here presented to you our solution of the problems of the Indian people. We next appeal to you to discuss it dispassionately and out of your discussion to build up the principles of Peoples Freedom. Once you have done that, your duty is clear. You have to popularize those principles, you have to carry them among the people. You have to invite them to think, to discuss and to criticise constructively. This will help the people in course of time to get a concrete picture of their ideal — their ideal in a reliable form — which will furnish them with a motive force for fighting for it, because for the first time they will feel they can realise it. So far as the political parties are concerned, they will decide either to fight for or against the ideal or maintain studied silence or vagueness. In any case people will be able to sift the grain from the chaff.

We make this appeal to you in the name of the future of the Indian People, in the name of Indian Freedom, with the confidence in You as an educated and enlightened individual in society who has a social responsibility higher and more onerous than those unfortunate millions who are illiterate, backward and steeped in poverty. We are not making an appeal to you to

take sides between parties and their hairsplitting arguments, but simply to *Think Constructively* and then to *Act Constructively* in pursuance of the goal of progress and prosperity of the Indian people which is higher than any party. In a word, as we said before, we are inviting you to *Think, Decide and Act*.

Radical Democratic Party

14: V.B. Karnik to M.N. Roy

M.N. Roy Papers – M.F. Roll No. 16
[NMML]

Radical Democratic Party

10.8.43

Dear Com. Roy,

Your letter dated 8th together with the application¹ to the Viceroy came yesterday.

In the application I have to suggest two alterations. Para-9 regarding Prov. Govts making a statement recommending greater labour representation in Legislatures will have to be deleted. For I don't think Prov. Govts are making any such declaration. It is a wrong report in the press. My information is that they are making a statement about parallel tri-partite machinery in the provinces.

The second alteration I suggest is that we should not at the moment make our suggestion about the name. We should wait till the proposal is accepted. And secondly it will not be desirable to raise this question at Jamalpur meeting of the E.C. where only a few of us will be present. We may do it in a later meeting. We can then easily get our name accepted without such heart burning. If it is mentioned in the application and then the matter is not raised at Jamalpur it will not look proper. Am not forwarding the application until I hear about these points from you.

We are asked to make our suggestions about the agenda. Two of the items namely minimum wages and more representation to labour in legislature etc. are included on our suggestion forwarded by me some time back. It is certainly necessary that the Federation representatives should meet before the Conference and discuss the agenda. I have asked them to reach Delhi latest by 5th morning so that sometime during the day we may have a meeting. I suggest that later in the day we may invite the T.U.C. representatives to our office for a joint consultation. If you agree I shall write to that effect to the T.U.C. The copy of the agenda will be sent to you as soon as it is received.

Mitra has sent a report about his work in the distribution sub-committee. He enquires if you received his draft about appeal to the middle classes.

I shall issue the circular as suggested by you to Prov. Com. The Cable to the *Daily Herald* is also being sent.

Herewith the cheque about which I wrote to you before. I leave tomorrow evening for Patna. I shall reach Patna 12th night. 13th I shall spend in Patna and then go to Jamalpur. 14th, 15th and 16th I shall be there. 16th evening I leave for Calcutta reaching there 17th at

about 9 a.m. I shall spend three days in Calcutta leaving for Bombay on 19th evening by the B.N.R. I shall be back in Delhi about the 30th. I hope to hear from you in Jamalpur and Calcutta.

With heartiest greetings.

Yours sincerely,

Karnik.

P.S. Ghosal from Jamalpur reports a strange thing from Bihar. Diptish Chandra Roy III Class *machinist* in Machine shop, E.L. Rly Workshop, Jamalpur having 7 years technical experience was selected as a Bevin Boy 8th Batch having stood 3rd in exam. 28th April, he was informed of his selection, 20th May, he was asked to go to Patna by next train to report himself to Chairman, National Labour Service Tribunal, Bombay. He went to Patna but did not get his passport. He was asked to wait in Patna. On 25th he was informed that his selection was cancelled and he was permitted to go back to Jamalpur. It is learnt that passport was not granted to him because of his connection with I.F.R. and R.D.P.

I have written to the Labour Depart about his case. You, if you think fit, write to the Home Dept. Selection for the 9th Batch is being made. He would very much like to get a chance in this batch. Roy, Ghosal writes, is an enthusiastic supporter of ours in Jamalpur.

Signed

1 Not printed.

15: British India Corporation to M.N. Roy Regarding advertisements

M.N. Roy Papers – M.F. Roll No. 28
[NMML]

The British India Corporation Limited

Cawnpore 25th Aug. 1943.

Dear Mr Roy,

I have duly received your letter of 22nd instant on the subject of Advertisements in the *Daily Independent India*.

This matter was previously referred to the Corporation and I am now attaching, for your information, a copy of the reply which was sent to the Delhi Office of the Paper on the 10th May last.

I should explain to you that, at the moment, when the Corporation's Branches are 100 per cent employed on orders for the Government of India, we have nothing to advertise and any advertising that we are committed to at the present moment is in fulfillment of out-standing

contracts or of a complimentary nature. In the circumstances, I think you will agree that in taking up space in the Weekly journal, we have probably done as much as can be expected.

With kind regards,

Yours sincerely

M.N. Roy, Esq.,
'Independent India',
Dehra Dun.

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Editorial in *Independent India* dt 26.9.1943

Independent India - Vol. 7, No. 38
[NMML]

The Future for India

The war is nearing its end. The controversy regarding India's relation to it, which confused the political life of the country for these four years, is antiquated. India will still have to serve as the base of operation against Japan. But the danger of invasion of India by Japan has practically disappeared. The war in the East may continue for some time after the war in Europe is terminated. Whatever may be the attitude of the older political parties regarding India's relation to the war during the remaining period, that can no longer affect the ultimate result of the war. Therefore, it is useless to continue the controversy in that connection even today. Whatever may have been the difference in the past, now all fighters for Indian freedom must focus their attention on the post-war period. What is going to happen in India after the war is over? That is the question of the moment.

The older parties and leaders may still continue the agitation for termination of the constitutional deadlock, which was created by the controversy about India's relation to the war. But there is little possibility of any constitutional change during the remaining period of the war. The Government feels, not without reason, that it can carry on the war without any greater co-operation of the people. Therefore, the argument that without a National Government India's man power and resources cannot be harnessed for winning the war, does not carry any weight with the Government; nor are Allied Powers impressed by it.

The expectation that American intervention will compel the British Government to come to terms with the Congress, has become equally untenable. It is quite clear now that the vast bulk of American public opinion as well as the American Government is for the moment concerned with India only as a base of military operations against Japan. Americans visiting this country during the last year and a half seem to have convinced themselves, by a closer acquaintance with the situation, that neither is the establishment of a National Government indispensable for guaranteeing the success of projected military operation, nor can the nationalist anti-British feeling seriously disturb the situation so as to prejudice them. Consequently, the pro-Indian agitation in America has of late been waning. Progressive opinion in America, of course, still remains sympathetic to Indian aspirations, but realises the difficulty

of introducing such far-reaching constitutional changes as would satisfy older Indian political parties who opposed India's participation in the war except on that condition.

In India, the agitation for the termination of the so-called deadlock is carried on as a matter of prestige. Thanks to the decisively favourable war situation, and the perspective of victory in the near future, the Government is not likely to be eager for a settlement on the terms of the opposition parties. Therefore, if the Congress leaders were released, they would find themselves in a rather embarrassing position. Realising that, they themselves do not seem to be very eager to come out of prison, which they can do any day by simply withdrawing the Bombay resolution of the A.I.C.C.; and if it is true that the Congress leaders did not intend that the movement launched upon their arrest should develop in the way it did, they should have no objection to disowning that movement. Thus, the release of the Congress leaders depends entirely on themselves. But as there is no chance of their being released from prison to be the rulers of the country immediately, it is a matter of political expediency for them to wear the martyr's crown of thorn until a more favourable turn of the situation. If they came out now, to remain in political wilderness, it would be proved conclusively that their political strategy was futile. That will inevitably shake the popular confidence placed in them. The Congress leaders therefore, naturally, are reluctant to take that risk, and have been discouraging all practical moves which might secure their release such as the plan of the A.I.C.C. members out of jail meeting to rescind the Bombay resolution.

Under these circumstances, no constitutional changes during the remaining period of the war are possible. But they will surely take place after the war. That perspective does not result from any faith in the declarations of the British Government. Constitutional changes are bound to take place as soon as the military emergency will be over, simply because the Government of India Act of 1935 has broken down. It must be replaced by a more workable, if not a more liberal, Constitution. If India fails to take the initiative, once again a Constitution will be imposed on her by the British Parliament.

The British Government's challenge to the Indian parties to produce an agreed Constitution has not yet been taken up. There is no reason to believe that after the war the older political parties and communalist organisations will compose their quarrels because irreconcilable shibboleths are the basis of their very existence. But for the sake of prestige, they will most probably resist another Constitution being imposed by the British Parliament, irrespective of its merits or defects. Consequently, there will be another deadlock, and the political progress of the country will be indefinitely delayed, unless the masses of the people are mobilized on a platform broader than that provided by the older political parties and communalist organisations.

India's advance towards freedom, therefore, does not depend either on the good will of the British Government, or on an agreement among the older political parties. Popular initiative alone can promote India's political progress by removing the obstacles to the necessary constitutional changes and moulding these changes so as to make them at least partially instrumental for the establishment of genuine democratic freedom.

To organise popular initiative in that direction, therefore, is the task of the moment for all the fighters for, and champions of, the freedom of the Indian people. They will accomplish that task by placing before the people the fundamental principles of the Constitution of a Democratic State and enlisting their conscious support for these principles. Once a concrete picture of the freedom they want is placed before the people, they will be inspired with enthusiasm and develop the will to attain it by their own efforts.

The Radical Democratic Party has formulated the following as the fundamental principles of a Constitution which will establish people's freedom, and has been carrying on propaganda to popularize them:

1. The supreme sovereignty belongs to the people to be exercised through the direct control of the executive as well as the legislative function of the State by the elected representatives of the people.
2. The Federal Democratic State of India is to be composed of a number of autonomous republics built on the basis of linguistic and cultural homogeneity as far as possible.
3. All the component parts of the Federation are to have a uniformly democratic constitution.
4. The land as well as the underground riches are the collective property of the nation.
5. Promotion of the productivity of labour through the introduction of modern mechanical means of production is the responsibility of the State.
6. Heavy Industries and banks are subject to State Control.
7. Cultivators are entitled to hold land without any disability, subject to the payment of a unitary land tax. Small agricultural producers are to be free from all other taxation except local rates.
8. Promotion by the State of large scale co-operative agriculture through the supply of modern machinery and cheap credit.
9. An irreducible standard of living for all labouring in fields, factories, mines, transport, offices and schools, to be guaranteed by a minimum scale of wages.
10. Employment of relief is a right of citizenship.
11. Nobody shall labour for more than six hours a day, for six days a week, and every worker shall be entitled to one month's leave with full pay every year, and women workers to three months maternity leave.
12. Free and compulsory secular education for all children up to the age of sixteen.
13. Promotion of public health and sanitation is a charge of the State.
14. Freedom of press, speech and association to be constitutionally guaranteed for all but the enemies of the people.
15. Fullest freedom of religion and worship.
16. Identical rights and responsibilities of citizenship for men and women.
17. Protection for the rights of minorities through proportional representation on public bodies.
18. Complete cultural autonomy.

As these principles present to the masses a concrete picture of freedom, there has been a growing response from them. Local Conventions of people's delegates have been held in a large number of places throughout the country to endorse the principles. The delegates are elected in meetings held all over the selected area to explain the fundamental principles.

All champions of people's freedom can participate in this activity, and before long create a powerful sanction for the demand for the establishment of a genuinely democratic State.

The procedure for organizing the people's initiative for moulding the future Constitution of the country has also been formulated by the Radical Democratic Party. The delegates to local People's Conventions are elected from a more or less large group of villages or particular urban areas after a period of campaign to popularize the principles. Local People's Conventions elect delegates to District Conventions, and the latter to Provincial Conventions. Finally,

delegates elected by Provincial Conventions will meet in the National People's Convention to endorse the fundamental principles of the Constitution of a Democratic State.

People's Committees set up by the local People's Conventions will elect delegates to the Constituent Assembly, which will meet ultimately to give legal sanction to the Constitution worked out in detail on the basis of the fundamental principles endorsed by the National People's Convention.

The National People's Convention will demand the establishment of a Provisional Government which will in due time convene the Constituent Assembly and supervise the formal promulgation of the Constitution and the election of the Indian Parliament under the new Constitution.

Meanwhile the local People's Committees will function as the guardians of the people's interest in a variety of ways. Primarily, they will begin the reorganization of the economic life of the country which is the condition for the establishment of freedom needed by the masses of the people. Consumers and primary producers co-operatives will be formed as the most effective instrument under the given situation for reorganizing the economic life of the country. By virtue of this initiative in tackling the most fundamental social problem, together with other auxiliary activities promoting popular education and public sanitation, the People's Committees will become the rallying ground of the masses of their respective localities and give organised expression to their energy and will. Thus, they will develop into the basic units of the rising democratic State. Through their instrumentality, the people will become the custodians of effective political power.

The Radical Democratic Party appeals to all the champions of the freedom of the Indian people to take up this constructive activity forward and take their destiny in their own hand. That is the road of India's advance towards the goal of freedom, which will be within her reach soon after the war is over. That is the chance for them to take up her place in the world revolutionized by the war. It depends on the realistic, far-sighted and progressively minded fighters for freedom whether she will be able to avail of the chances, instead of remaining in the backwaters of world politics, embittered by racial animosity, while waiting for freedom to come as a gift of the hated foreigners.

From the very beginning, the Radical Democratic Party was of the opinion that this war was going to revolutionize the world, and that India could not remain unaffected by the process, even if she did not participate voluntarily and purposefully in this objectively revolutionary world conflict. The chances of Indian freedom have become brighter owing to the certainty of the defeat of the Axis Powers. But India may still miss her chances of freedom if she remains dominated by the older political parties and leaders, who failed to march abreast of world events in the most crucial period of history.

The Radical Democratic Party has always maintained that a realignment of forces in the public life of country, and rationalization of Indian politics were the conditions for the freedom of the Indian people. Political developments, sure to take place immediately after the war, will create an atmosphere favorable for the necessary realignment of forces. All progressively minded people, who conceive of freedom not as a mere change in the complexion of the government, but as an ideal with a concrete social content, must take the initiative before it is too late. They must take the field immediately, so that by the time the war will be over and political developments will begin to take place, the Indian masses will also be mobilized so as to assert themselves on the situation and shape the developments according to their needs and aspirations.

Pioneer in the field, the Radical Democratic Party will gladly welcome the co-operation of all who feel the spirit of the time and are prepared to travel the way which is lying open before the Indian people to reach the goal of freedom. Let us join hands, and march ahead.

Central Executive Committee
Delhi, September 21st, 1943
Radial Democratic Party

17: Copy of a Special Branch Officer's Report sent to the Chief Secretary, Govt. of Bihar

Govt. of Bihar Pol. (Spl) File No. 23/1944
[Bihar State Archives]

P.M. Sen of the R.D.P., Chowhalta, Bankepur has written a letter dated Patna 7.1.44 to Com H. Ghosal, R.D.P., 4, Ekka Stand, P.O. Jharia, Manbhum. A copy of the same letter is given below:

'Please find enclosed the draft of the proposed memorandum we want to submit to the H.E. If you want to make any addition or alteration please do it and send it back at your earliest.

To,
His Excellency,
May it please your Excellency.

The undersigned whom your Excellency has been graciously pleased to allow to wait on you hereby submit that the R.D.P. seeks to fulfill the great task of bringing about a close alliance between India and British Democracies through building up a relation of integration between Indian people and Indian State. In the atmosphere of blind racialism and narrow nationalism, it was no doubt a gigantic job for the R.D.P. to propagate for and to secure the willing and purposeful cooperation of the people of this country in support of the present war. Since the very beginning of the war, the R.D.P. had to reckon with scurrilous propaganda and open hostility of the major political parties and the vested interest, they represent. In spite of all overwhelming odds we are today bold to submit before your Excellency that our party could put in very substantial work as can be evinced by the growing popularity of the R.D.P. and its admirable growth in his province during this short period. With the progressive outlook and helpful attitude of your Excellency the R.D.P. is confident of making a bigger contribution to the progressive cause for which the allies are fighting today.

Labour Activities

Before making any submission, we want to express our deep sense of gratification at the decision of the Government for the appointment of adjudicator in the protracted labour disputes in this province and the proposed creation of a full fledged special Labour Deptt. in order to formulate a progressive labour policy the need of the hour. We are thankful to the Government for duly considering the case of Mr Kunju Behari Singh the Secretary of Musaboni

and Moubhanda Labour Unions and for the removal of the order of externment against him. We may further bring to your kind notice that if the order of restrain against our Com. P.K. Menon be withdrawn our trade union activities in the Musaboni and Moubhanda Centers will furthermore be strengthened and consolidated. In the labour field our work is unique and our party has experienced a phenomenal growth.

Cooperative Movement

The R.D.P. has been developing a strong cooperative movement in the province. The so-called normal channels of trade have proved to be faulty and undependable. The recent tragic experience on the food front calls for a vigorous effort to open up alternative channels of supply. We have learnt with great pleasure that Your Excellency took keen interest in the co-operative movement in the province of U.P. Given Your Excellency's kind attention, there can be a healthy development of the co-operative movement in this province as well. The R.D.P. is eager and willing to do everything so as to rapidly develop the co-operative movement. To make the co-operative scheme successful, priority of supply of all controlled commodities will have to be provided by the Government and such supply once being guaranteed, its immediate effect will be to overthrow the economic saboteurs from the social field and subsequently to arrange a very good feeling of rationing does not stand opposed to the ideas of co-operation if the Government makes the co-operative stores the distributing agencies in the scheme of rationing.

Propaganda and Publicity

The greater difficulty that the R.D.P. has been experiencing is the lack of proper machinery for propaganda of the admirable work that the party is putting in. The press in India is controlled by more or less, a section of people sympathetic towards the recent sabotage movement launched by the Indian National Congress and it is obviously impossible to expect from them any publicity for our cause which runs contrary to their unsocial profit motive. We have therefore transferred the publication of the Hindi edition of our popular weekly organ the 'Janata' from Calcutta to Patna and we are sure that Your Excellency must be aware that the said Hindi weekly is being published from Patna for the last six months. We submit that the 'Janata' has the proud privilege to be the solitary non-official organ consciously advocating war support in the province of Bihar. But in the present days of high prices we have been very much financially embarrassed. We therefore fervently appeal to Your Excellency for kindly extending to our paper a financial grant in the shape of subsidy, the facility of Government advertisement and ordering the Government Circulation so as to make the 'Janata' self-supporting and effectively serviceable to the people of this province.

Post War Reconstruction

The result of the present war is now a forgone conclusion. Without indulging in any facile optimism we submit that the Allies are sure to win this war. But winning the war will not be of any fruitful purpose if no peace is secured after such war is won. Like other countries, India will also have its post-war problems. It has therefore become imperative to decide upon a progressive post-war policy which will be beneficial to the toiling masses.

We have gone through the recent address delivered by Your Excellency to the Bihar Chamber of Commerce and the expression by Your Excellency for the formation of a Post War Reconstruction Committee in this province is in our opinion a historic pronouncement.

The R.D.P. was all along stressing the necessity of functioning (*sic*) such a committee and will be glad to give whole hearted co-operation in this matter. We appeal to Your Excellency to include representatives of R.D.P. in such committee or board, as the case may be, when such board or committee is constituted.

We have already placed before Your Excellency in the foregoing lines the salient points on which we would like to be favoured with an opportunity to have a personal talk with Your Excellency. We the undersigned, therefore, request Your Excellency to spare some time so as to allow us to wait upon Your Excellency.

We remain,
Your Excellency's most
obedient servants

18: Extracts from Fortnightly Report from Bihar for the first half of February 1944 — Criticism of RDP

File No. 18/2/44 - Home Poll (I)

[NAI]

Communists: Propaganda continues for the release of Political leaders and the formation of a National Government, and the programme is flavored with strong criticism of Government's handling of the food problem. Estrangement between the Communist Party and the Provincial Trade Union Council grown steadily. The Trade Union Council considers the Communists are using the Trades Union Organisations to strengthen their own party interests, while in their turn the Trade Union Council are criticised for failure to take steps with regard to the coal situation.

At a meeting of the Communists in Jamshedpur apparently the only subject mentioned was criticism of the Radical Democratic Party for the unfair distribution of standard cloth which had been entrusted to them.

19: Extracts from Fortnightly Report from Orissa for the first half of February 1944 — Efforts of RDP

File No. 18/2/44 - Home Poll (I)

[NAI]

Radical Democratic Party: As already stated, the efforts of this party in the Ghumsur bye-election ended in a complete fiasco. The campaign was conducted by a number of members of the party from other provinces, and bombastic telegrams were sent to the Headquarters of the Organisation with promises of certain success. The party, however, profess not to be downcast by their defeat, which they attribute only to the fact that they did not refuse the help of Sri Dibakar Patnaik, M.L.A., which was thrust upon them at the last moment; the other candidates were careful to refuse the offers of assistance by this gentleman.

20: Extracts from Fortnightly Report from Bengal for the first half of March 1944 – Sweepers on strike

File No. 18/3/44 – Home Poll (I)

[NAI]

... The Sweepers of the Mymensingh Municipality went on strike on the 27th February, and demanded higher pay, less work and the supply of rations. Their pay was raised from Rs 23 per pair to Rs 30 per pair, and arrangements were made to open a municipal ration shop. On hearing of these concessions the sweepers returned to work. This strike is reported to have been engineered by the Radical Democratic Party.

21: Editorial in *Independent India* dt 12.3.1944, 'Their Ambitions' (extracts)

Independent India – Vol. 8, No. 10

[NMML]

The resolution adopted and the speeches made at the annual session of the Federation of Indian Chambers of Commerce and Industry deserve to be considered seriously by all persons interested in the progress and prosperity of the Indian people. . . .

There was a time when Indian businessmen used to eschew politics. That was the period when they were building up their economic power with the help and under the patronage of the Government. In that period they were indifferent, if not hostile, to the nationalist movement in the country. In course of time, however, their economic power grew and with the growth of power grew also their economic and political ambitions. The war, which has borne so heavily upon the large masses of India, had an exactly contrary effect on her business men and enormously strengthened their economic position absolutely as well as relatively to the position of their rivals, the British capitalists. This had its repercussion on the nationalist movement in the country. Slowly but surely it came under the influence and domination of businessmen and in course of time it began to be used by them as an instrument for the advancement of their political and economic ambitions.

The identification is now complete, particularly with regard to the aims of political and economic activity. Political independence and self-sufficient autarchic economy were the aims of the nationalist movement. The Federation of Indian Chambers of Commerce and Industry has today the same aims. Why should it not therefore take the nationalist movement under its protecting wings, and utilise it in furtherance of its activities in the political as well as the economic field? . . .

The plan of economic development sponsored by Sir Purshottamdas Thakurdas,* which was in principle enthusiastically accepted by the session, has been discussed threadbare in these columns. It is significant to note that none of the criticisms advanced against the plan was satisfactorily answered at the session. Attempts were made to answer some criticisms, but

they were largely in the nature of evasions and expressions of some pious hopes. The main point as to how production can be developed within the framework of an economy based on the profit motive without leading to the greater exploitation of the toiling masses and how larger production would necessarily ensure a larger share of the goods produced to them was not at all considered by the businessmen assembled in the conference. The conclusion is, therefore, inevitable that what they are interested in is only a large production and a larger turnover in order that there may be larger profits. It may be legitimate on their part to think in those terms, but let them not pretend that thinking of theirs is in the interest of the nation and for the largest good of the largest number.

The undisputed economic sovereignty that the Indian businessmen aspire to was expressed in their demand: 'The Federation reiterates its opinion that India's accumulated sterling credits, should in the first instance, be utilized to repatriate British commercial investments in India'. Indian businessmen cannot brook any rival in India. The whole field of economic activity in the country must be indisputably left free for them. Masters of the whole field they will then develop the industries that they like and on terms and conditions that they may think fit to impose. This economic sovereignty will not be assured to them until they have the reins of the government in their hands. And hence follows their whole line of political thought and action and their demand for the release of national leaders and the establishment of a national government.

What will these — economic sovereignty and political rule of the businessmen — mean to the Indian people in terms of their welfare, freedom and progress? On the point of welfare they are promised a doubling of their per capita income after a period of about twenty years. There is no definite statement yet how that will be ensured to them even if the total national income is increased as planned. If present actions are any guide to the future it will be hazardous to put any faith in the promise made in the plan. In spite of war-time prosperity Indian businessmen have effected no improvements in the conditions of their employees. It is significant to note that this question did not at all engage the attention of the Federation. In view of this present record it is difficult to build any hopes about the future. Regarding freedom, the plan applauded by the conference has promised a complete eclipse of individual liberty. Without welfare and without freedom the progress that can take place will be only on the reverse gear. That is the fate awaiting the Indian people if the Indian businessmen succeed in their political and economic objective.

The general attitude of the businessmen towards freedom and progress can be gathered from the fact that they did not think it necessary to say one word in their resolutions about the war, about the issues involved in it and about their attitude towards the two belligerent sides. They are concerned with the war only in so far as it enables them to make crores and to consolidate their position as against their British rivals. The basic issues of world freedom, progress and civilization involved in the war do not interest them and they do not think it necessary to define their attitude towards them. But it is not merely a negative attitude. There was and there is still today, though in a less virulent form, a positive attitude as well. It is an attitude of hostility, and in some cases of indifference, towards the issues of freedom and progress. It manifested itself a year back through overt and covert sympathy with the sabotage activities of the Congress on the part of a number of prominent businessmen in the country. It manifests itself today through the incessant glamour for the unconditional release of persons detained in custody in connections with the notorious August resolution and the sabotage activities of the Congress. It is not difficult to imagine the kind of political rule and economic

conditions that will be established in the country when the businessmen attain the object of their activity.

22. Sheopuja Singh to Chief Secretary, Govt. of Bihar — Regarding peoples' plan prepared by RDP

Govt. of Bihar Pol. (Spl) File No. 23/44
[Bihar State Archives]

Radical Democratic Party
(Bihar Committee)
Chowhatta
P.O. Bankipore
Patna

To
Mansfield, I.C.S.,
General Secretary,
Govt. of Bihar,
Patna.

26th March 44

Dear Sir,

I have the honour to bring to your notice that in pursuance of the decision of the Central Secretariat of the Radical Democratic Party to popularize the Peoples' Plan prepared by the Post-War-Reconstruction Committee of the Indian Federation of Labour, the Bihar Committee of the Radical Democratic Party has decided to launch a campaign through out the province by holding mass meetings and demonstrations from 30th March onwards. Though the campaign will continue till the special All-India Conference of the Radical Democratic Party due to be held at Jharia on 5th-6th and 7th May 44, the demonstrative side of the 'Peoples' Plan Propaganda Campaign' will conclude on 9th April which will be observed as 'New India Day' and mass meetings and demonstrations will be organized throughout the province on that day.

In order that we can successfully launch the above mentioned campaign and hold meetings and demonstrations conveniently throughout the province, I would request you to please extend to us necessary permission on provincial scale. In case permission on provincial scale be not possible on technical grounds, I would request you to see that our people do not experience much difficulty in securing permission locally-specially in the Districts of Darbhanga and Saran.

I further beg to add that as our provincial Executive committee is meeting at Patna on 30th and 31st March, we would be greatly obliged if you favour us with an early reply.

Thanking you,
Yours truly,
(Sheopujan Singh)
General Secretary

23: Extracts from Fortnightly Report from Bombay for the first half of April 1944 – RDP meetings

File No. 18/4/44 – Home Poll (I)

[NAI]

Radical Democratic Party – The party made some efforts by means of meetings at Bombay and Poona, to boost Mr M.N. Roy's Plan for India's economic development after the war. The meetings were poorly attended. The party had never any following worth the name in this Province and its position has become even more precarious by the recent disclosure that Mr Roy, in his capacity as office bearer of the Indian Federation of Labour, has been subsidised by the Government of India to the extent of Rs 13,000 per month.

24: Extracts from Fortnightly Report from Bihar for the first half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

4. *Labour*

The Radical Democratic Party is paying a good deal of attention to the railway workers and jute mills in Darbhanga district and has held several meetings. The need of improvement in the flow of labour from one district to another is indicated in the reports of scarcity of labourers in one district-Bhagalpur, while the neighbouring district of Santal Parganas is reported in places to have an unemployment problem. Munition Workers of an Engineering Works of Dhanbad Went on strike for one day at the end of March, but resumed work on the same day at the intervention of the District Officer. Some of the labourers are said to be still dissatisfied and they were to meet the District Officer again. The number of labourers in the coalfields went up from 86,000 in January to 107,000.

25: Extracts from Fortnightly Report from Orissa for the first half of April 1944 – RDP in Limelight

File No. 18/4/44 – Home Poll (I)

[NAI]

Radical Democratic Party – This party has been in the limelight during the fortnight under review, having held as many as 5 meetings. The 'People's Plan' for economic development of India, prepared by the Indian Federation of Labour, was explained and compared and contrasted with the 'Fifteen Year Plan', prepared by the Indian financiers and industrialists. At one meetings, the Zamindari System was very vehemently attacked.

26: Article in *Independent India* dt 2.4.44

Independent India – Vol. 8, No. 13

[NMML]

Peoples' Plan and the Industrialist Plan

Business vs. Well-being

By G.D. Parikh M.A.*

The publication of the People's Plan for Economic Development of India has given rise to a number of comparisons being drawn between it and the plan earlier sponsored by the industrialists of Bombay. It has been contended in certain quarters that the most striking contrast between the two plans is the emphasis put by one on agriculture while by the other on industries. The difference thus has been reduced in a somewhat simplified manner to the difference between agriculture and industries, and a paper even has gone to the length of making the little amusing suggestion of combining the two schemes so as to draw up a satisfactory proposal for post-war development.

This simplified attempt to show the contrast between the two proposals indeed does not take us very far. It is a little misleading in character and may easily put us off the track. It is therefore necessary, notwithstanding the fact that the full text of the report of the Post-War Reconstruction Committee of the Indian Federation of Labour is not yet available to the public, to point out that the difference between the two plans is of a fundamental character, and that it is possible to see this even on the basis of such information regarding the People's Plan as is already made available.

The Bombay Plan visualizes the development of industries to the tune of about 500 per cent, that of agriculture by 130 percent within a period of fifteen years through a capital expenditure of 10,000 crores of Rupees. The People's Plan fixes up the target of 600 per cent, as the increase of the industries, and 400 per cent as that of agriculture, within a period of ten years, involving a capital expenditure of 15,000 crores of Rupees. A superficial glance at these targets thus broadly summarized, ought to show that while the former may be accused of neglecting agriculture, the latter cannot be said to be doing the same in respect of industries. Still popular mind seems to have jumped at the figure of 400 per cent development of agriculture, caught hold of it quite firmly and has been carried away in consequence with the idea that it is a plan for the agrarian development of the country. This seems to have happened for two reasons and the two have little to do with each other, though both of them are obviously wrong.

An important point of criticism against the Bombay Plan has been its neglect of agriculture. The criticism has been made from various quarters. The moment therefore a Plan appeared on the scene and was seen to be fixing up a higher target for agriculture, it was seized and made identical with the agricultural development which is visualised. The other has been the reason which has been prompting some subtle advocates of the kind of development visualised in the Bombay scheme to pull down any proposals which might be suggested as alternative

by just calling them a bad name. The talk of agrarian development is immediately branded as the talk of the accursed 'Imperialists' ruling over the country and the scheme which lays emphasis on agriculture is therefore naturally a scheme of interest to those 'Imperialists'. It is therefore obviously of no benefits to the nation, and as such should not receive any attention. It will be clear from the above logic that the alternate proposal is sought to be rejected through the use of convenient and handy political shibboleths, and the logic may prove to be effective with those with whom a slight suggestion is enough to produce hysteria.

This kind of superficial comparison between the two plans will be however of little use in understanding the real nature and spirit of either of them. Those who are serious minded enough to know that nature and spirit, and thus grasp the essential distinction between the two schemes will have naturally therefore to probe a little deeper and find out not only the difference between the so-called targets of development fixed in the two plans but rather why the targets are what they are and why they cannot be different.

The distinction between the trends of development visualised in the two plans can best be summed up by the two terms with which the present article commences – the basis of the Bombay Plan is business, while that of the People's Plan is well-being. To bring out clearly the distinction thus summarized is the purport of the present article.

This distinction can be best illustrated by the manner in which the two plans approach the economic problem of the country. Take for example the approach of the Bombay plan. It calculates in the beginning the minimum physiological standards of living for everybody, and on that basis estimates the needs of the people. Then somehow by a rather specious assumption it convinces itself that an increase in the national income by 300 per cent within the period of fifteen years will lead to the satisfaction of those requirements. Production must be expanded to increase the national income. Hence the increases in industrial and agricultural production. Now after all whether you increase the output of industries or of agriculture or of the services, the increased output will have to be consumed. That cannot happen unless a large bulk of the community is enabled to consume more and more. But they cannot be so enabled, unless the productivity of their labour is increased. Thus the problem can be solved effectively only when production is for consumption and not for exchange. The Bombay plan does not visualize such a change in the motive of production. It does not therefore escape from the contradictions of the present economy of exchange. It seeks to widen the limits of that contradiction to some extent in the interests of good business but nothing more than that.

How does it do that? A vast portion of the labour in the country is performed on agriculture. If it is to be enabled to consume more than the precious little that it is actually doing to-day, it is necessary to transfer a part of it from agriculture to other more productive channels of employment, and to make the other part of it which will remain on land produce more wealth. If however it is able to produce much more, it will naturally upset the balance. The demand for consumers goods will increase and internal expansion of industries may not be quite in a position to cope with the demand. But import of consumers goods, even if necessary, does not quite fit in with the ideas of the planners. A check on the increase of agriculture output is thus essential. That is the real reason of the low target, let it be released, also puts a definite limit on any improvements worth the name in the standards of living of the people – at any rate a vast portion of them – which is engaged on land.

The sponsors of the Plan however have tried to whitewash this contradiction under a very convenient protest. It is contended that an increase in the productivity of agriculture beyond

the extent to which its products can be consumed inside the country will make us dependent on foreign markets, and we may be in a very precarious position if these markets are not available. But any shrewd student of the Plan sponsored by them will see that it does not eliminate our dependence on foreign markets at all. The dependence however is for the sale of the industrial products. Who has assured the markets for these to us? In fact it is difficult to find them for the products of our industries than for those of our agriculture. The former will have to face very keen competition abroad, may have to be dumped or subsidised. In the latter case, provided we succeed in sufficiently diversifying our agricultural production, the demand is more or less ensured. But the view as it is pointed out earlier, does not quite fit in with the general object of the plan which is to make a little good business. Indeed Sir Purushottamdas spoke God's truth when he remarked, 'Everybody wants to become capitalist'. The trouble is everybody cannot be, and there they are, therefore, using their position in the interests of their business. The poor man enters their calculations only as the basis of that business and the prospects of its success.

Unfortunately, however, this business is a little too short sighted. The problems of our economy which demand a solution here and now are sought to be postponed under it. It is a thing to postpone them and quite another to meet them boldly and to solve them. Since the Bombay Plan does not seek to do the latter, the internal market under the plan will necessarily remain as restricted as it is today, perhaps a little less. On the other hand, with the development of industries visualised under it, the problem will become much more acute at the end of fifteen years. The goods may be sold abroad for a time, but the chances for doing so are bound to diminish with the passage of time and the difficulties will multiply. Once again the Planners will be required to face the problem of overproduction and slump, and to get over it with the only possible method of equating production with human demand. The question is: will they do so or will they seek the side of the alternative of producing the goods of destruction, the market for which may be assured by the state? The latter alternative will naturally have its stronger attraction, for the former will mean the end of business as business. If they will then have the courage to take to it, why do they not have that courage now? The consideration of making a little good business today thus will lead to the crash of tomorrow and to the development of an aggressive autarchic economy day after. That is the real nature of the Bombay Plan. Its spirit is business, its motive is considerations of profitability. The weakness of the present economy are therefore inherent in it, and its failure to solve the problem of raising the standard of living of the people is thus a foregone conclusion.

Let us now turn on the other hand to the alternative — the Peoples' Plan. The economic development visualised in this plan is on the basis of certain necessary and essential changes in the economic status quo. Though the plan has for its objective the satisfaction of the immediate and essential needs of the people, its real spirit is that of opening up the prospect of a continual improvement in the standards of living of the people, through the provision for them of a increasingly gainful employment. To achieve the immediate object itself the plan seeks to expand production of wealth but in doing so, it rightly emphasises the supreme necessity of a change in the motive of production. Production under the plan is to be for use and not for exchange. In a similar manner, the plan seeks to rationalize the main national industry in the country viz. agriculture with the object of liberating the cultivator from the clutches of the two forces of landlordism and usury which have been responsible more than anything else so far for his poverty.

Having thus laid down the essential changes that have to be brought about in the economic structure of the country with the purpose of promoting economic progress, the plan proceeds to expand production in the basic national industry viz. agriculture, with the object of increasing the production of wealth in the country. To open up the prospect of an ever increasing gainful employment for the people, it is essential that more wealth must be produced. The production of greater wealth must mean the necessity of investing a large amount of capital into the economy. From where is this capital to come? The only reasonable way of finding out that capital can be to increase the production of agriculture in the country to such an extent that it will not only satisfy the entire requirements of the community in respect of the food stuffs as well as the industrial raw materials but also leave a large amount of surplus for the purpose of being invested into the economy so as to raise its general technical and productive level. Thus rationalized agriculture will not only meet the requirements of the country but will create the necessary condition for the purpose of attaining the economic development which is so essential if the standards of living of the people are to be raised. It will thus be clear that the choice is not one between agriculture and industry as pointed out by some, but between economic development of two kinds, one carrying within itself all the contradictions of the present economic order and therefore full of dangers for the future, and the other creating the possibilities of plenty for the millions in the land.

The People's Plan visualizes industrial expansion and development to the extent of about 600 per cent of the present level. Under such conditions, it would of course be a travesty of facts to call it a plan of agricultural development alone. Its real merit and superiority over the alternate scheme consists in its seeking to create a sound and secure basis for the development of industries inside the country itself and thus promoting their development. Such an attempt is bound to be marked by an all-round increase in the productivity of labour and thus the guarantee for the rise in the standard of living of the people will be created. This will be possible under a Plan with well-being as its foundation rather than business. While the logic of business is scarcity; that of well-being is plenty. The economic development is to be attained not with the object of filling the private coffers of a few individuals here or there, but for the definite object of promoting the well-being of the people along lines as will guarantee the fulfillment of that laudable object.

We are living in the midst of an age full of outstanding developments and possibilities. The old traditional distinctions are breaking down every day under our eyes in almost all the fields, and the economic field is no exception. No longer will we hear of backward and advanced countries, agricultural and industrial countries, or countries which are the producers of primary commodities and those which produce the highly finished products of the industries. The world as a whole must come of age as a result of the war, and India will not lag behind. But industrialization of a country like India must hold some dangers both for herself as well as for the world at large, if it is undertaken not with object of meeting or satisfying the demand at home but for the purpose of exporting the products of the industries abroad. The two Plans of economic development for her sponsored from the two different quarters are both plans for industrial development. But while under one the development will be with the clear purpose of and along lines leading definitely to an improvement in the standard of living of her people, that under the other is with the purpose of exporting the products of industries abroad. That really is the distinction between the two plans — the distinction between business and well-being. Dare the common man of India make a mistake in the choice?

27: Extracts from Fortnightly Report from Orissa for the second half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

Communists' View of the RDP

5. Radical Democratic Party: Communists of Cuttack held a meeting on the 22nd April, when they condemned the selection of Mr Madhusudan Mahanti of the Radical Democratic Party to represent Labour overseas. One speaker described the members of the Radical Democratic Party as traitors who had been set up by the Government of India to counteract the influence of the Congress.

28: M.N. Roy to V.B. Karnik – Regarding the statement of Jamnadas Mehta

M.N. Roy Papers – M.F. Roll No. 28

[NMML]

April 17th, 1944.

My dear Karnik,

This letter will travel with you in the same train, and I hope it will reach you before you see Dr Ambedkar. You must have seen what appeared in the papers of Sunday as a statement from Jamnadas, and must have noticed its strangeness, issued from Madras, on the 15th. Presumably Dr Ambedkar wanted to see me in this connection. Pending our final reply, which cannot be given, of course, before we can confront Jamnadas with this statement we must categorically state that the whole affair was known to the IFL from the very beginning, including Jamnadas that the money was being spent through the provincial organisations of the IFL, but through individuals designated by me, according to the resolution of the Government of India.

You are hereby authorized to make the above statement to Dr Ambedkar, if he will ask our reply to the statement which is supposed to have been made by Jamnadas; you will, of course, be in a position to show Dr Ambedkar the minutes of the meeting of the Bombay Executive where the budget was made, and also the proceedings of the meeting of the Sub-Committee during the last conference. If necessary, you may go to the extent of saying that, if Mr Mehta has really issued such a statement, the General council will, on his return, pass a vote of no-confidence in him. That should satisfy Dr Ambedkar, if he requires any satisfaction.

If I am required to make any public statement, or do anything else, I shall do so on hearing from you.

With heartiest greetings

Yours sincerely,

M.N. Roy

Enclosure

News item in the Paper

Who Gets the Rs 13,000?

Jamnadas Mehta's Statement

MADRAS April 16 Mr Jamnadas Mehta, President of the Indian Federation of Labour, has issued the following statement:

Mr Jamnadas Mehta, the President of the Indian Federation of Labour entirely contradicts the statement recently published that the Government of India have been paying Rs 13,000 monthly to the Indian Federation of Labour for conducting any propaganda. This question was raised at the annual meeting of the Indian Federation of Labour held in Bombay in December last and considered by a sub-committee. It was explained by Mr M.N. Roy that the Federation received no financial contribution from the Government for any purpose. In the circumstances. Mr Mehta wants it to be clearly understood that the Indian Federation of Labour receives no financial assistance of Rs 13,000 as recently alleged in the Press. Its income is entirely derived from its own affiliated unions. Its accounts are publicly published and the said Federation is under no obligation to render accounts to the Government or any other outside authority, in connection with the alleged payment of Rs 13,000 about which Mr Jamnadas Mehta, the President of the Indian Federation of Labour, has no knowledge.

29 Extracts from Fortnightly Report from Bombay for the second half of May 1944 – RDP Conference in Bombay

File No. 18/5/44 – Home Poll (I)

[NAI]

Radical Democratic Party – On the 20th May the party held a conference in Bombay city which was attended by 100 delegates and 500 party members. Speeches were made emphasizing the necessity for the adoption of the so called People's Plan for the economic development of India and for the establishment of a true 'People's Government'. Mr M.N. Roy, while inaugurating the conference, stated inter alia that the party had undertaken the task of leading the struggle for freedom out of a vicious circle of negation. It was particularly noticeable that no resolutions were put forward in the open sessions of the Conference.

30: Article in *Independent India* at 14.5.1944

Independent India – Vol. 8, No. 32

[NMML]

People's Plan

By V.M. Tarkunde

(Speech at the Special All India conference of the Radical Democratic Party, Jharia, May 5th, 6th and 7th 1944).

From the very beginning the Radicals in the country have looked upon the ideal of political freedom as a means to attain the ultimate objective of material progress and cultural advancement. We have always looked upon political power, not as an end by itself, but as the instrument for bringing about those social changes which will free the Indian masses from the appalling poverty, backwardness and degradation in which they have been living for hundreds of years. We have never been under the narrow nationalist illusion that any type of native government is better than any type of foreign government.

We are aware that it is possible, even likely, to have in India a reactionary and oppressive native rule, under which the Indian masses would be exploited more ruthlessly than today and the general cultural level of the country would be still further depressed.

On the other hand we are stoutly opposed to the reimposition of the type of regime in which, we lived in the pre-war years. Our political goal is to establish a genuinely democratic People's State which will be able to banish the curse of poverty from this country.

This does not mean that we are concerned only with material prosperity and do not care for cultural progress. But we think that it is idle to talk of cultural progress at a time when the bulk of our people are half-starved, semi-naked, and eaten up with the anxieties and uncertainties of daily life. Cultural advancement can take place only on the basis of the satisfaction of primary human needs, and under conditions in which man will be freed from material pre-occupations.

To forge a political instrument capable of achieving these results has been the consistent aim of the Radical Democratic Party. The People's Plan shows what type of state is necessary in India for this purpose, and proves that a glorious future of unlimited progress and prosperity await the Indian people once that state is established.

The Plan proves, on the basis of unimpeachable statistical evidence, that a four-fold improvement in the living conditions of the common man of India can be brought about within the short space of ten years by a People's State. Agricultural output will be five-fold, and industrial production seven fold by the end of the ten years of the Plan. Poverty and ignorance would be altogether abolished from the country. Adequate housing will be provided for the entire population. Freed from want and working with modern instruments, the peasant and the worker of India will almost be a new man, hopeful and self-reliant, no longer cringing before his social exploiters and spiritual appraisers but looking forward to a future of unlimited self-development and self-expression. A new and glorious civilization, which will harmonize

the positive values of our past culture with the achievements of modern civilization can be built up in India if the People's Plan is resolutely implemented.

These magnificent results can be achieved by taking advantage of the mechanical inventions of modern science. These inventions have tremendously increased the productivity of human labour. If all the able-bodied men and women in India work for only a few hours per day with the help of modern machinery, a phenomenal increase in goods and services will take place in the country. This increased production will enable us to abolish want, misery and back-wardness. Certain obstacles which stand in the way must, however, be removed before such a development can take place. The objective of political power is to remove those obstacles which bar the path of our progress.

Let us start by considering the lot of the peasant. His conditions of life will never improve so long as he remains the slave of the landlord and the money-lender. It is true that agricultural production must be increased many-fold if the peasant is to have a higher standard of living. But under the present conditions, if any increase in agricultural production is brought about, it will only result in higher income for the landlord and the money-lender, leaving the peasant as poor and helpless as he is today. Moreover, if he continues to be poor, no industrial development can take place, for he being the main customer in the country, will be unable to purchase the goods produced by industries. The Plan therefore proposes to nationalize land and to abolish parasitic landlordism and usury. In doing so, the Plan does not propose to confiscate the interests of these classes without any compensation. It proposes to give them sufficient compensation to enable them and their dependents to be absorbed in the new economy as useful members of society. It is obvious that such a step, essential for the progress of Indian society, can be carried out only by a state which will give precedence to the interests of the starving millions in preference to the selfish claim of the feudal aristocracy.

Agricultural output cannot be materially increased except by introducing modern machinery in the processes of agricultural production. If, however, modern mechanical implements like tractors and reaping machines are employed in agriculture, a considerably smaller number of peasants will be able to cultivate efficiently all the arable land in India. Hundreds of thousands of peasants will be released from land. Under present conditions these erstwhile peasants cannot find employment in modern industries worked by labour-saving machinery. For, if they are employed there will be such a tremendous flow of goods in the market as cannot be profitably sold. The difficulty can be solved only by replacing the capitalist method of production, which is dominated by the profit motive of a few individuals, by the method of production for use. There can never be any unemployment under a system where production will be carried on for satisfying the needs of the people which are at present practically unlimited. And if the available labour satisfies all the essential needs of the population, further progress can take place by reducing hours of work and by increasing the age-limit of education.

The problem of unemployment is a concomitant of capitalism. It will not arise under a type of economy visualised by the People's Plan. The Plan proposes that future industrial expansion will mostly take place through funds belonging to the state, so that the industries will be state-owned. Such industries will run for the use of the people, and not for private profit. The Plan provides a guaranteed revenue of 3 per cent on private capital already invested in industries, as well as on the capital invested in trade. Hence all the economic development which will take place in India under the Plan will be directly for the benefit of the people.

The capitalist mode of production, under which the production of goods takes place for private profit, is obviously a self-contradictory process. Profit is obtained by giving as little as

possible for labour and raw materials, and charging as much as possible to the consumers. The low wages given to workers and the low prices paid to peasants help to retain their standard of living at a low level. These workers and peasants, however, form a majority of the consumers, and these are precisely the people to be approached for selling the goods produced so as to leave satisfactory margin of profit for the capitalist owner. Thus the profit motive of industry, by retaining an unfair system of distribution of incomes, retards the increase in production as well. It is not surprising that the Indian capitalists are haunted by the bugbear of unemployment. It is significant that, under the Capitalist plan prepared by the industrial magnates of Bombay, no proposal is made for the mechanization of agriculture. Such a step is bound to create a vast problem of unemployment with which they will never be able to cope. Our capitalists seem to know that it is necessary for the preservation of India capitalism to retain our agriculture in a backward condition.

The abolition of feudalism and a rigid control of capitalism are thus the essential preconditions, on the fulfillment of which a magnificent edifice of economic development can be built up in India, so as to raise the standard of living of the Indian people. Naturally, the Bombay Capitalists' Plan does not propose any of these revolutionary changes. It seeks to bring about industrial expansion on the basis of the present medieval structure of Indian economy. Under any such plan, the bulk of the Indian people are bound to remain poor, and their poverty will put a severe restriction on the internal market of the country. Under these circumstances, industrial expansion is bound to lead to either the Japanese model of subsidised exports, or the German model of building up a huge armaments industry. Whichever of these methods is followed in India, it is bound to lead to fascism. The Radical Democratic Party will oppose tooth and nail any such attempts to introduce fascism in India under the pretence of bringing about the economic development of the nation. Having done everything in its power to fight against international fascism in this war, the party will never submit to the triumph of internal fascism in India. The resolution which I have proposed for your acceptance expresses our unanimous determination to fight this impending evil.

There can be little doubt that the People's Plan, which we are endorsing by this resolution, will alone solve the problem of poverty and ignorance which faces the Indian people. But how will the Plan be implemented? It is necessary to create a country-wide sanction for the execution of the Plan. While adopting ways and means for creating that popular sanction, this resolution also appeals to the Viceroy to implement the Plan. The Viceroy has solemnly declared on several occasions that is his intention to pursue a policy calculated to raise the standard of living of the Indian masses. It must be realized that, in the post-war years, it would be impossible for any Government to go on without any plan. If no plan is undertaken, a vast problem of large-scale unemployment is bound to arise in the post-war years as a result of the closing down of industries producing war materials as well as the demobilization of the armed services. Hence a return to the pre-war system of *laissez faire* would be impossible. The choice is between a type of plan produced by the Bombay industrialists and the People's Plan prepared by the sub-committee of the Indian Federation of Labour. In the ultimate analysis, the choice is between fascism and democracy in India.

It is opposed to the interests of the British people, no less than those of the Indian masses, to establish a fascist regime in India by adopting a fascist plan. The National Government wanted by the authors of the Bombay Plan can have no other meaning. British Democracy, having gone through such a tremendous sacrifice in men and materials for the defeat of international fascism, will be only stultifying itself if it encouraged fascism in India. Hence this

resolution appeals to the Viceroy, and through his to the British Democracy that he represents today, to carry out his declared intentions of pursuing a policy of popular welfare by adopting the proposals contained in the People's Plan.

It is, however, clear that the Viceroy, with the best intentions in the world, cannot pursue a policy of popular welfare without introducing radical changes in the present machinery of Government, including his Executive Council. The welfare of the Indian people cannot be promoted with the aid of those who are concerned with maintaining the privileges of the upper classes, or who have deluded themselves into believing that there is no conflict of interests, between them and the rest of India.

It is known that people of such an outlook occupy prominent places in the Viceroy's Executive Council as well as in the rest of the machinery of Government. Hence the declared policy of the Viceroy is sabotaged or vulgarized in practice. If the policy is to be successfully carried out, the Viceroy's Executive Council must be reconstituted with the inclusion of those who can be relied upon to champion the cause of the masses against their exploiters, and who are organically connected with the people and can secure popular co-operation for the execution of a programme of popular welfare. The Radical Democratic Party is the organised expression of the forces which can be relied upon to carry out such a programme and to secure popular co-operation in its execution. The resolution therefore appeals to the Viceroy to reconstitute his Executive Council with the aid of the genuinely democratic forces in the country. If this suggestion is accepted, conditions are bound to be created which will eventually lead to the establishment of a People's State in India, so that our Plan of economic development can be implemented.

In view of our belief that a radically democratic England is bound to emerge from the turmoil and suffering of this war, it is not illegitimate to hope that those who rule this country on behalf of the British people will be found willing to sponsor the political and social changes which are necessary for the well being of the India masses. But let us clearly see that the fate of our Plan does not depend upon the sweet will of the Viceroy or the British Government. It ultimately depends upon the creation of an irresistible popular will to establish a People's State a state which will nationalize land, control private capital, and in short carry out the revolutionary changes in the social-economic structure of India which are essential for the progress and prosperity of the India people. In the absence of such popular sanction, even a sympathetic Government will be unable to resist the social and economic power of the vested interests and to fulfil the precondition necessary for the execution of the Plan. On the other hand, when such popular sanction is forged, the fate of the Plan will not depend on the good will of the British Government, for then the people will know how to create a state unable of putting their Plan into effect . . .



31

Article in *Independent India* dt 4.6.1944

Independent India – Vol. 8, No. 35

[NMML]

The Two Plans

By Prof. G.D. Parikh

(Speech delivered at the Special Conference of the Radical Democratic Party held at Jharia on 5th, 6th and 7th May 1944)

Turning to the financial aspect of the two plans, we find that while the Bombay Plan aims at the solution of the problem to be attained through large scale inflation, mobilization of small savings, and foreign borrowings, the People's Plan looks forward to a method of finance which may be considered as sound from the point of view of all criteria. I cannot go into details regarding the effects, the peculiar methods of financing, proposed in the two plans, will produce on the living conditions of the vast masses of our people. But you can easily imagine these, if you put large-scale inflation and mobilization of small savings together. Those who have been all along crying hoarse against inflation, are now telling us that the results produced through the accelerated working of the Government Security Printing Press will not be harmful, if the Press is owned by a so-called national Government. Of course they talk of an all-out-control, and this will be there for a period of fifteen years. But you can easily imagine the nature of the control from the fact that the state will be dominated by the vested interests in the country, and its efficacy from the fact that it is conceived only in a legal and formal sense. We have ample experience of what such control means, during the war period itself. If the Finance Member of the Government of India needs a staff 550 times that at present in order to ensure some success, I am afraid, the Finance Member of this so-called national Government will not be able to do this job even with a staff perhaps 5000 times the present one.

The planners have in fact referred to what this control will mean in unmistakable terms. They talk of an eclipse of individual liberty and freedom of enterprise. And this is not an innocent utterance as it is sometimes made out to be. There are a number of very important and relevant questions in this respect for which we must try to find out an answer, in order to fully appreciate the menacing and dangerous character of these observations. Will the Finance Member of the national-capitalist Government seek to impose controls which would be in the interests of popular well-being? One does not have to go too far to find an answer. Mr Birla, who perhaps aspires for the post, has already told us what he would do in that capacity. In an article written recently in the *Eastern Economist*, under the caption, 'If I were a Finance Minister', Mr Birla says that what he would have done is 'to ensure a reasonable level of prices (which can give stimulus to production) and would have, beside taxes, introduced compulsory savings for all classes of people in society'. But he would give liberal concession to undistributed profits specially if it is 'to be utilized for expansion of production'. A reasonable level of prices will stimulate production — i.e., our national Finance Member will try to restore

the profitability of business. And he will do so by reducing the prices of raw materials, and by fixing up wages and prices of finished articles in such a manner as will provide enough inducement to production in a system which is based on production for profits. Let there be no mistake about any one of these things for they all appear in the above article of Mr Birla. Not only that, but the idea of obviously inequitable taxation of mobilizing the purchasing power of the poorer sections of the community, giving liberal concessions to profits that are sought to be reinvested, under conditions under which the profitability of business is raised and maintained by the Finance Member, subsidies for exports at the expense of both the taxpayer as well as the consumer, and a host of similar dangerous ideas are contained in that article. There could have been no better testimony of the character of the Bombay Plan than this provided by one of its author himself. It is a voice of capitalism rapidly degenerating into Fascism.

The Peoples Plan, on the other hand, recommends a method of financing the economic development of the country, which is both sound and correct. The plan is based on production for use. It seeks to rigidly control all those agencies which are responsible for diverting a large part of our national income to their private pockets. It seeks further to collect the investable surplus into the hands of the People's State, only after such portion of it is left for consumption by the community as will find it under better living conditions in every year of the plan. Once the initial finance to the tune of Rs 1,600 crores is raised, the plan thus aims at financing itself.

Another rather serious consideration which I would like to point out in this connection, is that the Bombay Plan talks of retention of private enterprise. The entire plan is financed either through borrowings or through inflation. When the private entrepreneur will appear in the market competing with the public authority, which will need funds at least for the purpose of the provision of the different services contemplated in the plan, the latter naturally will have to offer an attractive rate of interest to obtain the funds. The burden of the public debt will grow but not only that, it will not at all be possible to provide these services unless they yield an adequate return. On the one hand, the people will thus sink under a heavy tax burden and the various schemes of compulsory savings devised for them by the National Minister, and on the other hand, they will have a large slice of their real income cut off as a result of the inflationary finance and the policies of the Government in fixing up prices at a level which will yield adequate profits and thus will provide a stimulus to production.

I have tried to show so far in a very broad manner, some of the salient features of the two plans which are before the country today, from the point of view of their bearings upon the living conditions of our people. I think that ought to be the first and foremost consideration for us in deciding what kind of planned economy we should have in the post-war-period.

From what has been shown so far, it will unmistakably be clear that it is really not at all a matter of choice between the two plans, so far as India's millions are concerned. The Bombay Plan is a plan of scarcity; the People's Plan is a plan of plenty. The Bombay plan is a plan of business and profits; the People's Plan of well being and use. The Bombay Plan will retain, perpetuate and worsen, the present inequalities; the People's Plan will remove them and thus open up the way for a continual economic progress and prosperity for the entire community. The Bombay Plan will develop in the country an export economy and will lead to greater international rivalries, ultimately culminating in war; the People's Plan will raise the standard of living of the people and make India a happy and harmoniously functioning unit in the new world order. The Bombay Plan will lead to a political organisation in the country which will have to be totalitarian, aggressive and will have to destroy the liberties of the people; the

People's Plan will lead to the rise of a genuinely democratic state, in which all power will be effectively possessed by the people themselves. Indeed, if we have the slightest regard for the conditions of India's millions and want to improve those conditions and thus bring hope and joy in their lives, we can clearly see that the Bombay Plan is a plan of poverty, sufferings and death, while the People's Plan is a plan of richness, joy and life.

32: Secretary, Bihar committee of RDP to the Government of Bihar asking for financial help for the Hindi weekly *Janata*

Govt. of Bihar Pol. (Spl) File No. 23/44
[Bihar State Archives]

Radical Democratic Party (Bihar Committee)

Chowhatta P.O. Bankipore Patna
14.6.44

J.W. Houlton, Esqr., C.I.F.,
Chief Secretary to the Govt. of Bihar
Patna

Dear Sir

Having come to know that some financial help¹ may be available to 'Janata' Hindi Weekly, in the shape of Departmental advertisement and monthly subsidy, I am placing before you the enclosed² datas regarding its circulation and approximate income and expenses per month for your kind and favourable consideration.

Our Party started the publication in Calcutta in the month of June '42, when all the 'Nationalist' papers stopped giving publicity to any news of our Party activities which we have been carrying on to mobilize public support in favour of the war since its outbreak. Subsequently, in June '43, the publication was shifted to Patna in order to make it more effective in Hindi speaking areas. Since then we have been able to create a strong public opinion in favour of the war, particularly in some areas of the Province as will be evident from the enclosed Agency list, and hope to spread the same opinion throughout the province if we can augment our meagre financial resources.

Yours sincerely,

Secretary,
Bihar Committee.

1. Subsequently the Government did not grant any financial help – Ed.

2. Not printed.



33 Extracts from Fortnightly Report from Poona for the first half of June 1944

File No. 18/6/44 - Home Poll (I)

[NAI]

RDP Convention at Poona

Radical Democratic party: The Fourth Convention of the Maharashtra Provincial Radical Democratic Party was held at Poona on May 26th and 27th. The attendance was about 150 inclusive of 75 delegates. Mr M.N. Roy in the course of his speech reviewed the history and activities of the Party and said that it was started to lead the struggle for India's freedom and to achieve the task of Indian revolution. The Convention adopted 10 resolutions inter alia endorsing the party's 'People's Plan' for the economic regeneration of India, urging His Excellency the Viceroy to implement it, disapproving of the appointment of one of the signatories to the Bombay Plan' (Sir Ardeshir Dalal) on the Executive Council and supporting the Bombay Government's Grain Purchase Scheme. The Party also held a 'People's Conference' on the 28th May which was attended by about 3,000 persons. Stereotyped resolutions supporting the People's Plan' and the 18 fundamental principles of the Democratic Constitution of India were passed by the Conference. Mr Roy also addressed two meetings of about 200 persons at Poona when he spoke on 'Political and Economic Planning for India' and held a private discussion with local Maha Sabha leaders on the 'People's plan'. The general public did not evince much interest in Mr Roy's activities in Poona and his speeches were strongly criticised for what were regarded as their bizarre notions about post-war reconstruction.

The Karnatak branch of the party held its second annual conference on the 1st June at Hubli (Dharwar District). It was attended by about 500 persons including 50 delegates. Speeches on the usual party lines were made and stereotyped resolutions were adopted at the Conference. The Conference was followed by a public meeting attended by about 3000 persons at which Mr Roy said inter alia that his party desired to enter the Assembly as representatives of the poor as the Congress had failed to safeguard their interest. The statement was resented by a section of the audience which loudly protested and caused trouble as the result of which Mr Roy and his wife withdrew and the meeting ended in confusion.

The Conference held by the party in Bombay City and referred to in my last letter concluded its session on the 21st May. Four stereotyped resolutions were passed at a meeting of the Subjects Committee held on that day but none of them was put forward at the open session. The party organised a workers rally on the 23rd May at which about 400 persons were present. The Party made a very poor show.

Altogether, M.N. Roy's visit to Bombay province appears have been a failure.



34: Extracts from Fortnightly Report from Bombay for the second half of June 1944

File No. 18/6/44 – Home Poll (I)
[NAI]

Radical Democratic Party: The entry of Russia into the war was celebrated by the party on the 22nd June. The members made a big effort to use the occasion to publicize their party and succeeded in organizing a demonstration bigger than that of the Communists or the Friends of the Soviet Union. At a meeting of about 400 persons, speeches were made paying tribute to the victories achieved by the Soviet Army and harping on the need for forming people's Government in India.

35: Extracts from Fortnightly Report from Madras for the second half of June 1944

File No. 18/6/44 – Home Poll (I)
[NAI]

R.D.P. Meetings in Madras

The Radical Democratic party held a few meetings in Madras this fortnight in which they decried the Congress as a capitalist organization and criticised the Bombay Industrialists' plan as an attempt to perpetuate capitalist domination. In Guntur they held a conference at which both the Congress and the Communists were attacked, and M.N. Roy's stand explained. In spite of their efforts however the party does not seem to be succeeding in making much headway.

36: Article in *Independent India* dt 16.7.1944

Independent India – Vol. 8, No. 41
[NMML]

Congress and the Deadlock

(V.M. Tarkunde, Bar-at-Law, General Secretary, Radical Democratic Party, has issued the following statement with regard to the recently published Rajagopalachari-Jinnah correspondence and the statement given by Mr Gandhi to Mr Gilder, representative of the *News Chronicle*, London.)

The recently published correspondence between Mr Rajagopalachari and Mr Jinnah, and the two statements issued by Mr Gandhi regarding his interview with a foreign journalist, represent

together an attempt on the part of Mr Gandhi to get the Congress out of its present helplessness and frustration and to make a bid for political power under the cover of the vague demand for National Government.

This attempt of Mr Gandhi consists of a double climbdown. On the one hand he makes an offer to the Muslims that he is prepared to induce the Congress to concede their right to self-determination, notwithstanding the clear resolution to the contrary passed by the A.I.C.C. On the other hand he seeks to assure the Government that he would, if allowed, induce the Congress Working Committee to abandon the August Resolution and co-operate with the war efforts on terms even less far-reaching than those rejected by the Congress during the visit of Sir Stafford Cripps.

The offer of Mr Gandhi to help and not hinder the war efforts comes at a time when the military situation has so improved that the United Nations and Anti-Fascist forces do not stand in need of such help. Indeed, so long as the military situation was really grave, the Congress was seen sitting on the fence, if indeed, it was not on the other side of the barricade. This purely opportunist attitude of helping the side which appears to be winning arose from the fact that Congress did not identify itself with the interests of the Indian masses and gave no regard to the fact that these interests could be promoted only by the defeat of Fascism in this war.

Hence, the demand for the so-called National Government, which would really mean giving effective power to the Congress leaders, cannot be justified on the ground of military necessity. Nor can it be supported by anyone who has any regard for the interests of the Indian masses. The fact that the Congress is dominated by the native capitalists and propertied classes, whose interests are antagonistic to those of the overwhelming majority of the exploited Indian people is well-known to the British Government. Government dominated by a privileged minority in India would not be a genuinely National Government. We hope the Viceroy and the Secretary of State of India will not allow themselves to be rushed by pressure politics into setting up a regime of reactionary vested interests in India and thus deprive the Indian people of the liberating effects of this anti-fascist war, to the success of which they have made a handsome contribution.

While the recognition of the right of determination of the Muslims is welcome, it is hoped that Mr Jinnah will not allow himself to be stampeded into an agreement with the Congress and thus join the anti-democratic block of Indian big business. The interests of the Muslim masses, no less than those of the Hindus, require the setting up of a genuinely democratic Government which will represent the interests of the people as a whole and not those of a privileged minority.

The programme of the so-called National Government which is demanded by the Congress has never been formulated. What this National Government will do to promote the interests of the Indian people has never been disclosed. In fact the demand is merely to replace the present personnel of the Government with another set of persons. The demand is being pressed on the ground that the Central Legislature will support them. The Legislatures, however whether Central or Provincial, represent a fraction of the Indian people, the majority of whom remain unfranchised.

A democratic regime can be established in India only on the basis of adult franchise. Till the constitutional changes necessary for the purpose are brought about, a Provisional Government must be set up on the basis of a clearly formulated programme of the welfare of the masses. Such a Government alone can be called genuinely National. The Viceroy has

repeatedly expressed his desire to promote the interests of the Indian masses. Let him form a Government from persons who can be relied upon to carry out his declared policy and to take steps to enable the Indian people in the post-war years to elect a Constituent Assembly on adult suffrage. Such a Government will alone fulfil the objects for which this war is being waged.

37 J.J. Hutton, Dept. of Planning and Development, to M.N. Roy — Reconstruction programme

M.N. Roy Papers – M.F. Roll No. 14
[NMML]

D.O. No. 16/Rc

Dept. of planning and Development,
Sect. G. (North Block),
24th August 1944.

My dear Roy,

With reference to your letter dated the 18th of August. I am putting your suggestion for a meeting with the members of the Govt. of India together with the people's plan before an early meeting of the Reconstruction Committee of the Council and will communicate further with you in due course.

Yours sincerely,

J.J. Hutton.

M.N. Roy Esq.,
Radical Democratic Party,
Faiz Bazar,
Delhi.

38: Extracts from Fortnightly Report from Bengal for the first half of September 1944

File No. 18/9/44 – Home Poll (I)
[NAI]

Annual Conference of the RDP in Calcutta

5. A Hindu conference at Barisal in East Bengal and the annual conference of the Calcutta Radical Democratic party were held during the fortnight. In his presidential speech at the Barisal Hindu Conference, Mr N.C. Chatterjee strongly criticised Mr Rajagopalachariar

proposals for a communal settlement and stated that the 'battle for India's freedom and unity will have to be fought by the people of Bengal'. Resolutions were passed at the Radical Democratic party's Conference demanding the release of anti-Fascist prisoners like Comrade Lokenath Bal' and the other Chittagong Armoury Raid prisoners', and the 'immediate setting up of a provisional Government which must be above the influence of reactionary vested interest', and criticizing the 'attempts which are being made today to bring about a communal settlement without any reference to the principles of social and political democracy'.

39: Extracts from Fortnightly Report from Bombay for the first half of September 1944

File No. 189/44 - Home Poll (I)

[NAI]

Annual Session of the RDP

Radical Democratic Party: The annual session of the Sholapur District party was held at Pandharpur on August 27th and 28th under the presidentship of Mr H.K. Mahajani. The attendance was about 200 inclusive of 50 delegates from various talukas of the District. Mr Mahajani, in the course of his speech, criticized Mr Gandhi's policy on the ground that it displayed a slavish mentality and benefited only a few capitalists. Referring to Mr Raja gopalachari's formula for the Congress - League settlement, he observed that no single individual had a right to vivisect India and that Indians wanted independence for their people and not for the Congress - League Union. The delegates adopted seven resolutions of which the more important supported the party's plan for Swaraj and post-war reconstruction, advocated the abolition of *middlemen* and the introduction of co-operative institutions for agriculturists and other producers and asked Government to set up a temporary Central Executive Council with power to concert measures for fresh elections based on adult franchise. The Party also held a 'people's Conference' on the 29th August which was attended by about 400 persons mostly agriculturists. Mr A.N. Patil, M.L.A., in his presidential speech exhorted the audience to create an awakening in the masses and to protect their interests with a view to improve their condition

VII Civil Servants with Nationalist Sympathies

The documents included in this section illustrate the attitudes of some Indian members of the I.C.S. whose political sympathies were quite close to the Congress. To be sure, the documents quoted do not necessarily reflect how widespread was the desire for self-government among this privileged social strata. As we mentioned in the main introduction, many tried quietly to soften the vindictiveness of the British element in the bureaucracy against Congress workers. Explicit evidence of nationalist views in broad sympathy with the aims of the Congress and out of line with general bias of most British officers is revealed in some documents, which have been gathered together here.

The Indian officers were people mostly recruited after the reforms of 1919, persons whose working life had seen the Salt Satyagraha of 1930-31, the period of rule by ordinances under Lord Willingdon, and service under Indian ministers after 1937. They had carefully observed the changes in the defensive armour of the British Raj, and by the forties were able to argue their case intelligently and effectively in the official notings. Documents No. 1, 6, 12-14, are useful illustrations of the way H.V.R. Iengar* stood up to the Home Department of the Government of India. He protected the group which was operating the underground broadcasting unit of the Congress from being legally branded as fifth columnists aiding the axis powers. He also took a firm stand against the Central Government's efforts to stop all aid to the associations involved in Mahatma Gandhi's rural uplift programme (Docs 11-14). In this context the minute of D.L. Mazumdar* (Ch. 1(b), No. 69) should also be read. Mazumdar's note saved the associations from the wrath of the Raj because he pointed out the legal difficulties involved.

The Pollard case (Docs 4, 5 and 7) is significant for two reasons. It shows the solidarity of Indian officials, cutting across communal barriers, when personal indignity was heaped on an Indian lawyer by a British police officer. It also shows the different perspectives from which two members, an Indian and a British, of the judicial branch of the I.C.S. viewed the situation. In the lower Court a Muslim official of the provincial service had fined the British police officer for losing his cool and physically assaulting an Indian lawyer. The police officer's appeal against the fine was dismissed by the Indian judge (a member of the I.C.S.) who saw no justification for such behaviour, and who condoned the shouting of nationalist slogans like 'Vande Mataram' by a group of students outside the police station (Docs 4 and 5). On the other hand, at the Calcutta High Court, where a further appeal was heard by a British judge, the latter considered that losing one's balance and temper was understandable and pardonable because of the War-time emergency (Doc. 7). 'To Saibal Gupta,' who had a well-deserved reputation for never concealing his nationalist sympathies, the action of the police officer deserved punishment; to Justice Lodge,* perhaps both racial solidarity and Britain's military anxieties were factors that weighed in his mind in countermanding the verdicts of the two lower Courts.

Indeed, many Indian members of the I.C.S. served in the judiciary rather than in the executive branch of the service. In this situation they were saved from the embarrassment of harsh action against nationalist activists, and were also in a position to soften the rigours of

the punishments inflicted by the Raj. Documents 8-10 refer to the District Judge of Midnapore – Karuna Kumar Hajara, I.C.S.* – who was looked on with disfavour by the Police and the Bengal Government for not meting out severe punishments to the Congress rebels in Midnapore. He was quickly transferred to a district in North Bengal. Doc. 15 shows that the Indian Chief Secretary of Bihar treated security prisoners with respect, while doing a round of Hazaribagh jail. Doc. 18 shows that the British authorities were disturbed on noticing that Bengal jail officials stretched the rules when security prisoners were receiving visitors.

The one instance of resignation from the I.C.S. on nationalist grounds among our documents is that of R.K. Patil,* in the Central Provinces (Docs 3 and 17). Without going to that extreme, members of this privileged elite – the 'Brown Sahibs' – showed, by their actions in many issues, that their evaluation of the Indian political scene was quite different from that of the British element in the bureaucracy.

1. Views of H.V.R. Iyengar and C.H. Bristow of Bombay 1. Government on Congress secret broadcast

File No. 3/44/43 – Home Poll (I)

[NAI]

H.V.R. Iyengar wrote

30.1.43

I used to listen to these broadcasts (though it was not always pleasant doing so owing to poor reception) and have now gone through the monitor reports and the summaries prepared by Mr Scott. I used also to listen to Tokyo and Saigon; and though we have not, as the Government of India have, the monitor reports of these broadcasts, I have sufficient recollection of them to be able broadly to compare them with the Congress broadcasts. My opinion was and is that these do not furnish any specific evidence of fifth column inspiration.

Undoubtedly the Congress broadcasts must have brought comfort to the enemy, as indeed must the whole civil disobedience movement. The main themes of the Congress station were, as will be seen from the passages marked in the monitor reports that people should leave the cities and go back to the villages (an advice repeated time and again), that the villagers should adopt a policy of self-sufficiency and refuse to sell to middlemen, that they should stop working in factories as the goods manufactured there will be used against them; that they should not work the railways as the railways convey the troops which are holding them down and so on. And, of course, there were wild exaggerations of the progress of the 'revolution and the brutalities' of the British Government in suppressing it – stories which Saigon, in particular, repeated with great gusto. But the question is not whether the Congress station gave comfort to the enemy but whether it was inspired by it. I suppose, in a very much smaller way, parallel case is the 'New Leader' of London which inveighs regularly against the imperialist nature of the war Britain is fighting; the weekly must be of some comfort to Dr Goebbels but few would say that Maxton* or Fenner Brockway* was in the pay of the German Propaganda Ministry.

Apart from repeating stories about the success of the 'revolution' and the brutalities of the British, the recurrent theme of the Tokyo and Saigon stations was that Japan was coming to give deliverance and independence to India. 'We are your friends. We are coming to make

you free.' The Congress Radio made no such statement though, being an illegal and secret station, it was in a position to say whatever it wanted to say. On the country, what it said was 'The British are our enemies, and we must drive them out'. There is, of course, to any ordinary thinking mind, a most dangerous lacuna in the argument here viz, that the British could not be driven out without bringing the Japanese in or that with the British quitting India, Indian independence at this stage is not worth a moment's purchase. But this lacuna was the big gaping void in the whole of Gandhi's arguments and is evidence of a dangerous hallucination but not necessarily of enemy inspiration.

There is much evidence of Congress socialist philosophy in the broadcasts. I have heard from private sources that Ram Monohar Lohia, an underground Congress Socialist who refused to make common cause with Subash Chandra Bose, was the main inspiration of these broadcasts and certainly there is internal evidence in support of this. For instance, on the 20th October the station said 'We have learnt bitter lessons of the democracy of the West enslavement of the working class and peasantry'. On the 23rd it stated 'The free India will be of farmers, workers and labourers'. Again on the 27th it repeated 'revolution for freedom is the revolution for the poor. The free India will be of the workers and peasants'. There was no wholesale condemnation of the allies and praise of the enemy. On the 20th October, the broadcast said: 'To the world mankind, the Indian people send a message of hope, of peace and of goodwill. Let us only remember that for the establishment of a truly peaceful and better world we need each country's kindness, each people's individual acts. We need Germany's technical skill, her scientific knowledge, her music. We need England's liberalism, her courage and literature. We need Italy's elegance. We need the old achievement and the new triumphs of Russia. We need the gift of laughter-beautiful laughter-loving Austria. We need her culture, her love of gracious living and China-what shall we say of China? We need her wisdom, her courage and her new hope. We need the glow and spirit of adventure of young America. We need the knowledge, the childlike simplicity of the primitive people. We need all mankind for the resurrection of peace. for the resurrection of her own dignity'.

This is in violent contrast to the tone of enemy broadcasts which have never admitted England's 'liberalism, courage and literature' or the 'culture and gracious living of China'.

In my opinion, the personality and antecedents of the people connected with the Congress station and the nature of its broadcast suggest that it was the work of Congress and Congress socialist people and leaders and not from the enemy.

C.H. Bristow wrote

The above (by H.V.R. Iyengar) seems a fair summary. The Congress Radio is characteristic of the Congress attitude and is essentially anti-British. It attacks what are considered the chief features of British rule viz. capitalism, industrialism and war effort. It encourages all means of bringing that rule to an end, by stopping communications, removing labour from industry by a return to the villages and by boycott. It excuses sabotage by comparing it to the destruction caused in war.

As Additional Secretary has pointed out, it carefully avoids pro-Jap propaganda, no doubt because the majority of listeners are not pro-Jap. The purpose behind it is to foster anti-British feeling without facing the practical necessity of a choice between British Government and Japanese domination. The authors may have made use of Japanese broadcasts and may themselves be pro-Japs but there is nothing plainly pro-Jap in the broadcasts. The attitude taken up is that Congress stands for higher things, peace, a prosperous peasantry, goodwill to the

best in all countries and no foreign domination. This is typical of Congress propaganda and fits in with the Congress aim of breaking down British rule in order to establish their own, with deliberate refusal to face the hard fact that India is not in a position to stand alone. There is no sign of fifth column inspiration, however much the propaganda may assist the enemy.

2: Governor of Bihar to the Viceroy (extracts)

Linlithgow Collection

[NAI - Acc. No. 2385]

From

H.E. Mr T.G. Rutherford, C.S.I. C.I.E.,
Governor of Bihar

Secret,

Camp, March 5th, 1943,

No. 160-G.B.

Dear Lord Linlithgow

Thank you for your letter of 1st March¹ commenting on my No. 125-G.B. of 16th February. May I be permitted to offer my congratulations on the stand made by Your excellency and the remaining Members of your Council against Gandhi's blackmail and the concerted blitz of the Congress press and sentimental politicians of India. They did their best to work up the feelings on which Gandhi really counted for effective coercion of Government and I felt that for us also the motto should be 'do or die'. Actually in this Province, apart from students, strikes at Patna, some public meetings and prayers, an employer-organised strike at Dal mianagar, a few hartals and the abortive hunger-strikes in certain jails there was remarkably little outward manifestation of interest by the general public. Lord Erskine always characterized South Indian politics as Bedlam and it is a mad feature of the present situation in India that because of the 'Mahatmic superstition' we have to employ police and troops all over the country in case the old zealot should die. Now that the threat is over I feel almost ashamed of the precautions taken and properly 'Scotch' about the expense. I see that Sarker realises that Congress have lost this round and must try and get back to the position before the break. The question is whether after their recent behaviour anybody can trust them to play the game while this war is on.

2. You will doubtless be interested to know that certain Indian officers of the I.C.S. consulted Godbole² as to whether they might put in a 'round robin' to Government for the release of Gandhi. Godbole reported this at once, but did not disclose the names. Some of them I can guess. He apparently told them not be fools and nothing more was heard of it. I let it be known that I would regard it as insubordination.

[Omitted: Para 3 - Situation in the Santhal Parganas - Ed.]

4. If Chandreshvar Prashad's letter to Griffiths which you refer to is the one giving his views on Gandhi's release I think it was very largely the production of the I.C.S. Secretary of

the National War Front, a Madras I regret to say. While I am on the subject of National War Front, I wonder if you have seen the enclosed production which appeared in every important paper 'give all the help you can – even to the British'. When is Griffiths going to cease apologizing for our presence in the land? Whatever the value of the National War Front in this Province, it has one good feature as compared with Madras that it has practically no paid staff, and the Leader and District Leaders draw only traveling allowance. . . .

Yours sincerely,

T.G. Rutherford.

[40(6) G.G.43].

1 and 2. Not printed.

3: Governor of C.P. & Berar to the Viceroy – Regarding the ICS officers

Linlithgow Collection

[NAI – Acc. No. 2200]

From

H.E. Sir Henry Twynam, K.C.S.I., C.I.E.,

Governor of the Central Provinces and Berar.

No. 146-G.C.P.

Camp, May 3rd, 1943.

Dear Lord Linlithgow,

Will Your Excellency please refer to your secret letter, dated 23rd April 1943,¹ asking for a report on the extent to which Hindu officers have been affected by Gandhi's fast.

I entirely agree that there should be no half measures and that 'bad or moribund limbs' in the services should unhesitatingly be removed. I am glad, however, to be able to reassure Your Excellency that the rot has not spread far. Patil is a somewhat exceptional character among Hindu members of the ICS. He represents exactly the cheap and unrealistic sentimentalism and easy emotionalism which were expounded in the pages of Harijan. He belongs to a fairly well-to-do family so that economic considerations did not impose to him the realism they impose on others. He has long had a veneration for Gandhi, and this, together with his personal associations with one of the leading families responsible for the Chimur murders, the Naiks, weakened his resistances to a realistic approach to the political situation. He would have made an unreliable executive officer and a poor judicial officer and we are well rid of him.

As to Nagarkatti,² he has, as I have already reported expressed personally to the Chief Secretary his appreciation of the leniency shown to him in connection with his contribution to the Capital Punishment Relief Society. So far, he has not referred to the recent orders prohibiting even anonymous contributions which are likely to prove embarrassing to Government. He is a useful officer, clever and practical, and I think that the episode of his contribution may be regarded as closed.

I questioned Parmanand, ICS,* Secretary. L.S.G. Department, an officer in his nineteenth year of service, regarding the meeting held at his house to discuss the attitude of Hindu members of the ICS, towards Gandhi's fast. Parmanand is a sensible, level-headed officer, and I gather that he invited the Hindu officers concerned to his house with a view to giving them sensible advice while, at the same time, offering them an opportunity of letting off steam. From him I understand that the only three officers who expressed themselves strongly were Patil and Nagarkatti, to whom I have already referred, and J.K. Atal,* an officer in his sixth year of service who is, incidentally, the grandson of Sir Tej Bahadur Sapru. Atal has the making of a very good officer, but is still affected by under-graduate enthusiasm and unrealism. At or about the time of the Gandhi crisis he is believed to have seen his grandfather and to have received practical advice from him. Atal, however, is a very different type from Patil and could, I think, be influenced on the right lines.

Apart from these three officers of the ICS and Guha, the Director of Industries, there have been no marked reactions: I do not think there need be any uneasiness about the ICS or other services generally. I see Guha, as a departmental head, quarterly and I shall tackle him at his next interview on this matter. We are not very pleased with him as a Director of Industries and his character is such that I have no doubt that he will toe the line without any hesitation when it is made plain to him which side his bread is buttered.

In short no further action is at present indicated or indeed necessary. The storm over Gandhi's fast has in fact cleared the atmosphere in more ways than one: politically, we all know now where we stand in the event of another fast and Government servants have also learnt a valuable lesson.

Yours sincerely,

H.J. Twynam.
[125 (2) G.G-13].

4: Judgement in R.C. Pollard's Case

Private Papers of the late Saibal Kumar Gupta,* ICS (Calcutta)

Heading of Judgment of Appellate Court

Court of Session, Appellate Jurisdiction
The 7th May of 1943

Criminal Appeal No. 25/1 of 19-43

Appeal from the order of Moulvi S.U. Choudhury, Magistrate of Berhampore, dated 5th January, 1943.

R.C. Pollard – Appellant.

Judgment

This is an appeal filed by Mr R.C. Pollard, Superintendent of Police, Mursidabad against his conviction u/s 355 I.P.C. and a sentence of fine of Rs 200. The facts are not complicated and

may be stated quite briefly. On the 9th of September last some boys created a disturbance in the Civil Court compound and four of them were arrested by the accused and taken to his house within which the D.I.B. office is situated. One of the arrested boys was Rajat Kumar Ghose, nephew of the complainant Babu Satya Gopal Majumdar who is a pleader of Berhampore. Satya Babu went to the house of the accused in order to ascertain on what charge Rajat had been arrested and whether he would be enlarged on bail. Inside the compound he spoke first to A.S.I. Babu Rabindra Nath Biswas and then to Inspector Babu Prafulla Gopal Sen Gupta in order to elicit the required information, but neither of them was very sure of the charges against the arrested boys. At this moment accused came to the veranda and learnt who Satya Babu was and what had brought him there. He at once flared up and peremptorily asked him to clear out of the premises. As Satya Babu did not comply, accused came downstairs, caught him by the scruff of the neck, dealt him slaps, blows and kicks and threw him out of the gate. On these allegations a complaint was lodged against the accused by Babu Satya Gopal Majumdar before the Subdivisional Magistrate of Berhampore on the following day. The defence case is that the accused used no more than necessary force to eject the complainant whose entry into his premises was unauthorized and unlawful. The learned magistrate at first thought that sanction of the Provincial Government was necessary before he could take cognizance of the case against the accused who was a public servant, and dismissed the complaint u/s 203 Cr. P.C. This order was overruled by the sessions Judge of Mursidabad who held that no sanction u/s 197 Cr. P.C. was necessary and directed further enquiry. After that preliminary enquiries were held and the accused was brought to trial with the result stated above.

The order of the lower court has been assailed both on grounds of law and on questions of fact, but before I discuss the arguments advanced on points of law it is necessary that the facts of the case should be clearly ascertained. Some of these facts are not in dispute at all. It is admitted that there was a disturbance in the Civil court compound on the 9th of September last, organised on political grounds, and that, at about 2 p.m. the accused went to the scene of disturbance, arrested four boys and had them brought to the I.B. office which was situated in a portion of his quarters. One of the arrested boys was Rajat whose uncle Babu Satya Gopal Majumdar went to the house of the S.P. at about 2.30 p.m. in order to enquire about the charges on which his nephew had been arrested and to ascertain if he could be released on bail. It is not denied that he was ejected by force out of the compound by the accused. The controversy centres round the manner in which this forcible ejection of the complainant took place and the facts and circumstances taking place just before this ejection. The complainant's case is that he was making enquiries from Prafulla Babu, the I.B. Inspector, when the accused came to the veranda, heard who he was and at once came downstairs and bundled him out with slaps, blows and kicks. The accused's case is that the complainant was talking to the arrested boys and would not move away even though he was asked to do so by the I.B. officers, that there was a hostile crowd on the street at the time, which was uttering seditious slogans accompanied with threats of violence, that the complainant approached the accused in spite of the fact that he had been asked to clear out of the premises and that the accused was under a bonafide impression that the complainant was the leader of the hostile crowd outside and had to be ejected by force. If the accused had made a mistake in coming to that conclusion, that was a bonafide mistake of fact for which he could not be held liable in view of the provisions of sec. 79 I.P.C. That at any rate is the light in which the learned Counsel for the appellant presented the facts before me at the time of the hearing of appeal,

though from the judgment of the learned court below who has dealt elaborately with all the matters placed before him by the accused I do not find that this was exactly how the matter was argued at the time of the trial.

On a careful consideration of the evidence I find myself unable to accept the interpretation of the facts presented by the learned Counsel on behalf of the accused. The principal witnesses examined by the prosecution, besides the complainant, are Mohit Sarkar (P.W.1), Ajit Biswas (P.W.2), Bijananda Sen Gupta (P.W.3) and Santimoy Ghosh (P.W.5). Those examined by the defence are Ajit Chatterji (D.W.2), Manindra Pal (D.W.5) and Ram Provash Ram (D.W.4) besides the two I.B. officers Prafulla Gopal Sen Gupta (D.W.1) and Rabindra Biswas (D.W.7). The difference between the witnesses examined on behalf of the defence and those examined on behalf of the prosecution lies in this that the defence witnesses magnify the strength of the hostile crowd and assert that it was truculent from the start, that it threw stones and uttered threats when the accused came into the veranda and that the force used against the complainant was considerably less than that the prosecution would have the court to believe. I find myself in complete agreement with the view held by the learned trial court as to the relative credibility of these two sets of witnesses. It is common ground that the complainant was inside the compound and standing only two or three cubits away from the place where the arrested boys were kept under guard. Bijayananda Sen (P.W.3) and Santimoy Ghose (P.W.5), who were among the four boys arrested, were thus in a better position than almost all the others to see what was taking place. Prafulla Babu (D.W.1) and Rabindra Biswas (D.W.7) were in a similar position but they are obviously partisan witnesses with a decided inclination to tilt the scale in favour of the accused who is their official superior. That Bijayananda and Santimoy were convicted under the Defence of India Regulations does not necessarily brand them as untruthful and learned Counsel gracefully refrained from this kind of cheap denigration of their character. But he says at the same time that the active part taken by the accused in arresting them and in bringing about their conviction is not likely to make them entertain an excess of charitable feeling towards the accused. I concede that this is so but this argument does not apply to the case of Mohit Sarkar (P.W.1) and Ajit Biswas (P.W.2). These two boys did not join their classes but followed the crowd and stood on the road outside the compound to see what was happening. Personally I think that all these four witnesses who are college boys and are apparently of respectable families are more to be relied on than the witnesses whom the defence has produced and examined. They are unanimous in saying that the complainant did not speak to the arrested boys and that he was unceremoniously bundled out with slaps, blows and kicks when he approached the accused to ask for bail. That the complainant did not speak to the arrested boys in the compound seems to me to be perfectly clear. It is not likely that the complainant would speak to them again in the S.P.'s house when he had already taken his nephew to task at the civil court compound for joining the demonstration. It is improbable that he would persist in talking even when asked by the I.B. officers not to do so. Having gone there to ask for bail, it is unthinkable that he would do anything which might annoy or displease the officers on duty. The story that the complainant went on talking to the arrested boys in spite of protest and would not move away, seems to have been deliberately introduced in order to lend colour to the defence set up in the lower court on the strength of rules, 315 & 678 of the P.R.B. In my opinion this part of the story of the defence witnesses is definitely untrue.

It is also obvious that defence witnesses Ajit Chatterji (D.W.2) and Manindra Pal (D.W.5) on whose non-official status learned Counsel laid some stress are hardly worthy of credit. Both of them prove that they are *'plus royalist que le roi'* and they give a version which is even more

hair-raising than that given by Inspector Prafulla Babu who cannot certainly be accused of any desire to minimize the activities of the crowd outside. Yet, while Prafulla Babu speaks of a crowd of about 100, Manindra Pal says that it numbered between 150 to 200. While Prafulla Babu says that the crowd cried out, 'khabardar' when accused peremptorily asked the complainant to clear out, Ajit Chatterji says that there was a cry of 'Maro', 'Maro'. Ajit Chatterji further says that when the complainant was speaking to the boys under arrest and would not move, Prafulla Babu re-entered the office and came out with the S.P., apparently meaning to imply that the S.P. was called outside to deal with a recalcitrant customer. Prafulla Babu's evidence however shows that the S.P. came of his own accord when the complainant was speaking to him. The overzealousness of the witness to prove something beyond what Prafulla Babu has said can be easily explained. It appears from the testimony of this witness as well as that of S.I. Purna Chandra Bose (D.W.8), Officer in charge of Kotwali, Berhampore, that this witness was arrested on 2.10.42, for taking part in an unauthorized political meeting, kept in the thana lock up for a night and released on the following day on account of insufficient evidence. His house was also searched in that connection by the officers of the Intelligence Branch. It does not require much imagination to suppose that this opportune arrest and incarceration for a night accounts for the strange metamorphosis of a prosecution witness into a witness for the defence. It has not been explained how the accused could be so confident about the veracity of this witness as to examine him for the defence even though he was cited as a witness for the prosecution in the petition of complaint. I am not much impressed with the argument that the accused must have got the information from one Suren Saha of Kadai to whom this witness is alleged to have disclosed all facts.

In the same way it is one of the unsolved mysteries of this case how the accused got on to the track of the only other non-official witness Manindra Nath Pal (D.W.5) so as to be able to ferret him out of a distant part of the district and produce him as a defence witness. The learned pleader for the respondent argues that a brother of this witness has a gun license and this may have been useful in bringing pressure to bear. There may be something in this but in the absence of any evidence it is difficult to be dogmatic. In any case the appearance of this witness on the spot has not been very satisfactorily accounted for. He says that he came to the town of Berhampore to purchase some medicines from the bazaar and that he stopped near the place of occurrence on his way back from the Civil Court where he had gone to meet one Liakat Hossain of Bhagabangola to ask him about the registration of a particular sale deed. If he had really gone to the Civil Court it is extremely unlikely that he would not witness some part of the disturbance or notice the crowd that was following the arrested boys, but his evidence is that he did not see any commotion in the Civil Court when he was there. I agree with the learned Counsel that his inability to produce the cash memos of his purchases is no argument for rejecting his evidence as false. But I hold that the reasons given by him for going to the Civil Court and his statement that he did not see any part of the disturbance proves that he could not have gone to the Civil Court and could not therefore have passed by the scene of occurrence on his way back to the bazar. It is noticeable that the sale deed in question which is supposed to have taken him to the civil court on 9.9.42 was not registered even on 4.12.42 when he was examined as a witness. The evidence of Ram Provash Ram (D.W.4) is of very little use. He is a Jail Warder and his status is not superior to that of a constable though he is not subordinate to the S.P. He was in the house of the Superintendent of Jail which was across the street, and a row of trees as well as a crowd of people stood between him and the place of the alleged assault. He has tried to prove that the accused

handled the complainant not very roughly but for obvious reasons his evidence does not take one very far. He could not have seen the details of the occurrence from where he was.

There remain two more witnesses Babu Prafulla Gopal Sen Gupta (D.W.1) and Babu Rabindra Nath Biswas (D.W.7), the former an Inspector of the I.B. Department and the latter an Assistant Sub-Inspector. Of these two Prafulla Babu holds a more responsible post than the A.S.I. and his evidence shows that he is not inclined to exaggerate the facts as much as the other witnesses. It is true that he says that a crowd numbering about 100 men stood on the road to the east of the S.P.'s bungalow and began shouting slogans and that Satya Babu spoke to the boys under arrest on the lawn, but I have already given reasons for disbelieving the latter portion of the story. I do not agree either, that the crowd was large at the time Satya Babu arrived, for the testimony of Ajit Biswas (P.W.2) show that Satya Babu came in a rickshaw and passed the crowd that was following the arrested boys. Prafulla Babu admits in cross examination that when he first spoke to the complainant and asked him to go away no slogans were being uttered and it was after that the S.P. came and motioned the complainant to get out of the premises. It was at that moment that some people in the crowd cried, 'Khabardar'. I, therefore, hold that at the time the complainant went to the S.P.'s house only a small crowd had gathered and its attitude was not particularly hostile. It was not even uttering slogans at the time Satya Babu was speaking to the two I.B. officers in order to ascertain whether his nephew could be released on bail. Gradually the crowd must have swelled with the addition of pedestrians who passed that way and stopped to see what was being done with regard to the arrested boys. Some of them probably cried, 'Bande Mataram' or 'Inquilab Zindabad', though it is improbable that anything more inflammatory was uttered. This was probably noticed by the accused who had come out to the veranda and he also must have noticed that the complainant was inside the compound talking to some officers. He asked Prafulla Babu who this gentleman was and on being told that he was a relation of one of the arrested boys who had come there to ask for bail, he at once saw red and asked the complainant to leave the premises forthwith. As the complainant did not do so and the crowd outside made a demonstration, the accused hurried downstairs. The fact that the complainant went towards him gave him still further provocation with the result that he caught him by the scruff of the neck with the one hand, slapped his face with the other hand and threw him out of the gate. I do not agree with the learned Counsel for the appellant that he put one hand on the neck and with the other hand gently turned the face towards the gate in the manner in which a London constable is accustomed to disperse an unruly crowd. In that case it is hardly likely that the complainant would get a slap on his left cheek and temple; he would have got it very probably on the right. The final push admitted by the defence witnesses appears to me to have been administered not merely by the hand but also by the leg and the complainant was not wrong in thinking that it was a kick. I am not inclined to disbelieve the story of a kick merely because the accused and his witnesses deny it. For a respectable Bengali gentleman to admit that he has been kicked is the height of ignominy and it is improbable that the complainant would have said so in his complaint merely to magnify the gravity of the offence of the accused unless it was a fact. It is clear from the testimony of the District Magistrate Mr S.K. Chatterji that within a very short time of the incident the complainant went to him and told him about the occurrence including the fact that he had been kicked. Moreover, the two arrested boys Bijayananda (P.W.3) and Santimoy (P.W.5) also say that the accused kicked the complainant. Learned Counsel contends that the argument of the lower court as to the absence of contact between the complainant of this case and these two witnesses is not conclusive and that the

probability of tutoring cannot be ruled out altogether. I agree that these witnesses had to be brought to court on certain dates when they were in hajat, awaiting trial, but there is no evidence that during this period any one interested in the prosecution tried to get into touch with them and to tutor them, and I think it extremely unlikely that the police officers in charge of the accused would allow any tutoring in a case in which the S.P. is an accused.

For all these reasons I am unable to accept the argument of the learned Counsel for the appellant that the accused was under a bonafide belief that the complainant was the leader of the hostile crowd which was waiting outside and that he was approaching the accused when he came downstairs in prosecution of the object of that hostile crowd. This argument of the learned Counsel is absolutely untenable in view of the evidence of the I.B. Inspector Babu Prafulla Gopal Sen Gupta who says that he told the S.P. that the complainant was the maternal uncle of one of the arrested boys and that he had come for bail. The complainant had come in his court dress minus his gown and a responsible officer like the accused could certainly distinguish a lawyer in professional dress from the heterogeneous crowd of sight-seers some of whom were uttering slogans. The complainant was standing on the lawn close to the foot of the staircase while the crowd was waiting on the street outside, and not even the most overheated imagination could include the complainant and the crowd outside in the same composite picture and construe that the two were part of the same milieu. There is no doubt that the argument now put forward on behalf of the defence to the effect that the accused acted under a mistake of fact and thought the complainant to be the leader of the hostile crowd is an afterthought. It was not put forward in the lower court where the accused tried to defend his conduct by suggesting that the complainant was talking to the arrested boys and was liable to be ejected by force. There are certain officers who fail to keep their heads cool under the stress of some public disturbance and to whom any act or statement which smacks of disrespect to the constituted authority is anathema. It appears to me that the accused is one of those officers who failed to keep a cool head at a time of political disturbance and thought it an impertinence on the part of anybody to come to ask for bail for persons who were arrested on political grounds. That and the presence of the crowd outside made him act in obedience to what has been characterized by the learned Sessions Judge of Mursidabad as an irrational impulse and commit an assault on an innocent and respectable errand.

These being the facts, it is necessary to consider whether section 197 Cr. P.C. is a bar to the prosecution. It may be thought that the matter is concluded by the order passed by the Sessions Judge of Mursidabad. But learned Counsel for the appellant argues that the order of the Sessions Judge of Mursidabad was *void ab initio* in that the Subdivisional Magistrate had no jurisdiction to examine the complainant u/s 200 Cr.P.C. in view of sec. 197 Cr. P.C. and the order of dismissal u/s 203 Cr.P.C. which gave jurisdiction to the Sessions Judge was *ultra vires*. According to him the subdivisional Magistrate should, instead of examining the complainant and dismissing the complaint u/s 203 Cr. P.C. have returned the complaint to the party presenting it on the ground that no sanction of the provincial government had been obtained. This argument is based on the fact that section 197 Cr. P.C. says that a magistrate *should not take cognizance* of an offence alleged to have been committed by a public servant while acting or purporting to act in the discharge of his official duty, whereas section 200 Cr. P.C. only authorizes the magistrate to examine the complainant *after* taking cognizance. This contention does not seem to be sound. Even if it be assumed that the complaint showed that the accused was acting as a public servant I do not accept the learned Counsel's argument that the magistrate was wrong in examine the complainant u/s 200 Cr.P.C. Section 20 Cr. P.C. does not say that

a magistrate, *after* taking cognizance of an offence on complaint shall at once examine the complainant upon oath. It says that *a magistrate taking cognizance* shall do it. On a reading of the wording of this section it appears to me that the legislature did not intend the examination of the complainant to be an operation subsequent to the taking of cognizance of the complaint. It intended that the examination of the complainant should be made by the magistrate who is taking cognizance of the case. The phrase, 'taking cognizance' occurring after the word, 'magistrate' is an adjectival phrase qualifying the word, 'magistrate' and means a magistrate who is or is going to take cognizance. It does not necessarily mean a magistrate who has already taken cognizance. This interpretation is also in accord with common sense. It is not possible for a magistrate to decide merely on a written petition whether he should take cognizance or not unless he examines the complainant personally u/s 200 Cr. P.C. There is no case directly on the point but the ruling reported in 3 C.W.N. 17 shows that it is the duty of the magistrate to examine the complainant u/s 200 Cr. P.C. before deciding whether section 197 should come into operation or not. In the present case, therefore, the magistrate did not act illegally in examining the complainant u/s 200; and when he had done so, the only course open to him, according to the view of the law which he then held, was to dismiss the complaint u/s 203 Cr. P.C. When that was done the Sessions Judge of Mursidabad could certainly review that order u/s 436 Cr. P.C. and it is extremely doubtful whether this court can reopen the matter, which has been decided by a Court of coordinate authority. But I have considered the facts and I agree most respectfully with the opinion expressed by the learned session Judge of Mursidabad that the act of the accused which constituted the offence was not done nor did it purport to have been done in the discharge of his official duties. It is well known that in deciding whether sanction u/s 197 Cr. P.C. is necessary or not, the magistrate should look into the complaint and not into the story subsequently set up by the defence. Learned Counsel says that whatever may have been the facts stated in the petition of complaint the facts ascertained by the magistrate at the end of the trial showed that the accused was acting or purporting to act in the discharge of his official duties and he should have stayed proceedings till sanction of the provincial government had been obtained. The law on this point has been thus stated by Sulaiman, J. in *Dr Hori Ram Singh's case* (C.W.N. 1939, F.R. 50 at page 61.):

If the prosecution case as disclosed by the complaint . . . shows that the act purported to be done in execution of duty, the proceedings must be dropped. But if the prosecution case does not involve this, the case cannot be thrown out on the preliminary ground of want of consent of the Governor in his discretion. The mere fact that the accused proposes to raise a defence of the act having purported to be done in execution of duty would not in itself be sufficient, otherwise even a frivolous defence would prevent prosecution. The prosecution must be given a chance to prove its case. Of course, if the case as put forward fails, or the defence establishes that the act purported to be done in execution of duty, the proceedings will have to be dropped and the complaint dismissed on that ground.

What the phrase, 'acting or purporting to act in the discharge of his public duty' means has been explained in the following words by Varadachariar, J. in the same reported case

It does not seem to me necessary to review in detail the decisions given under section 197 of the Criminal Procedure Code which may roughly be classified as falling into three groups, so far as they attempted to state something in the nature of a test. In one group of cases it is insisted that *there must be something in the nature of the act complained of that attaches it to the official character of the person doing it*. . . . In another group, more stress has been laid on the circumstances that the official character or status of the accused gave him the opportunity to commit the offence. It seems to me that the first

is the correct view. In the third group of cases, stress is laid almost exclusively on the fact that it was at a time when the accused was engaged in his official duty that the alleged offence was said to have been committed. It does not seem to me right to make it the test.

In other words it is not the fact that at the time of the commission of the offence the accused was holding a particular official post or that the official post that he was holding gave him the opportunity to commit the offence which brings section 197 Cr. P.C. into operation and exempts the public servant from prosecution unless sanction is obtained from the provincial government. It is only when the act complained of is of a character that attaches itself to the official duty of the public servant that sanction u/s 197 becomes essential. In the present case the facts disclosed in the petition of complaint as well as those found by me on a review of the evidence does not warrant the inference that the accused was acting as a public servant. No doubt the complainant approached the accused in the latter's capacity as a public servant because he wanted to have one of the arrested boys released on bail or at least to know the charges on which he was arrested. But the mere fact that the complainant approached the accused in his official capacity does not prove that whatever the accused did on being approached was done in his official capacity. If the act of the accused had any inherent connection with the granting of or refusing to grant bail, it would have been done under colour of his office and would have required the sanction of the government before a prosecution could start. The accused, however, did not listen to the complainant but drove him out with violence and this act was quite extraneous to his official duty as the Superintendent of Police. Every system of civilized jurisprudence has to arrive at some sort of compromise between the primary duty of maintaining the civil liberties of the people and the need of affording protection to the servants of the State acting *bonafide* in the discharge of their official duties. In some, as in France, it is done by setting up special courts to administer a special system of administrative law. In others, as in England, the ordinary law courts are available to the citizens but the Public Authorities Protection Act, 1893 deprives him of remedy unless proceedings are started within six months of the act complained of. The protection is restricted to such acts as are done *bonafide* in the course of duty and ceases if the default is from motives other than a desire to perform a public duty. In the case of a Judge no action lies against him for acts done or words spoken in his judicial capacity in a Court of Justice: but this immunity does not attach to ministerial acts as opposed to a judicial act, and action will lie for a wrongful refusal to hear a case, though not for a wrongful decision (*Ferguson vs. Earl of Kinoult*, 1842). The English Law is not of course applicable to India where the protection afforded to a public servant is embodied in Statute — in this case, in sec. 197 of the Criminal Procedure Code. But it is useful as showing how carefully the statute must be interpreted in order to ensure that a provision intended to protect *bonafide* official acts is not applied to justifiable official vagaries. In the present case if the complainant had been an innocent member of the crowd and if in dispersing the crowd the accused had caused injuries to the complainant, it might have been argued with very good reason that the accused was acting or purporting to act in the discharge of his official duty and could not be prosecuted without previous sanction of the government. This was not the case here at all for the forcible ejection of the complainant was an isolated act which did not merge in the dispersal of the crowd and form part of the same transaction with the latter, because both in space and time the dispersal of the crowd was clearly separable from the throwing out of the complainant.

I, therefore, hold that the special protection afforded to public servants by sec. 197 Cr. P.C. does not apply to this case either on the facts disclosed in the petition of complaint or on the facts proved at the end of the trial. In throwing out the complainant unceremoniously

from his house the accused not only showed scant courtesy to a respectable gentleman who had gone to his house to pray for bail for one of the arrested boys but had also used unnecessary violence and dealt a slap, a blow and a kick which brought his act within the mischief of sec. 355 I.P.C. I hold that the accused was rightly convicted under that section. The sentence imposed upon him is not severe.

The appeal is dismissed
Sessions Judge, Nadia.
7.5.43
Typed at my dictation
Sessions Judge

*A copy of the judgment was in the Private papers of S.K. Gupta, I.C.S.

5. News item in *Amrita Bazar Patrika* dt 8.5.1943 on R.C. Pollard's case¹

Amrita Bazar Patrika (Calcutta), May 8, 1943

S.P.s Appeal Dismissed

Fine for Assaulting Pleader 'Rightly Convicted' Adds Sessions Judge

Krishnagar (Nadia), May 7 — The appeal of Mr R.C. Pollard, Superintendent of Police, Murshidabad, against the conviction and fine of Rs 200 imposed on him by the Sub-Divisional Magistrate, Berhampore, on a charge of assaulting Mr Satyagopal Majumdar, a pleader of Berhampore, was dismissed to-day by Mr S.K. Gupta, Sessions Judge of Nadia. The Sub-Divisional Magistrate of Berhampore convicted Mr Pollard under Section 355 I.P.C., on the charge that he had assaulted Mr Majumdar when the latter went to Mr Pollard's bungalow on the 9th Sept., last in connection with bail for his nephew who was arrested following disturbance at the Civil Courts that day.

In dismissing the appeal, the Sessions Judge thought that the accused was one of those officers who fail to keep a cool head at a time of political disturbance and think it an impertinence for anybody to come to ask bail for persons arrested on political ground. The accused showed not only scant courtesy to a responsible person who had gone to his house to pray for bail but used unnecessary violence in dealing him a slap, blow and kick.

The Judge quoted several High Court rulings and one of the Federal Court and held that special protection afforded to Public Servants by Section 197, Criminal Procedure Code, did not apply in this case. The Judge held the accused rightly convicted and thought that the sentence was not severe.

Dealing with the defence contention of a bonafide mistake of fact, for which the accused could not be held liable in view of Section 79, Penal Code, the Judge held this contention absolutely untenable in view of the evidence particularly of Inspector Prafulla Sengupta. The judge observed that a responsible officer like the accused could certainly distinguish a lawyer

in professional dress minus gown from a heterogeneous crowd of sightseers some of whom were uttering slogans. The complainant was standing at the foot of the staircase while the crowd was waiting in the street outside and not even the most overheated imagination could include the complainant and the crowd in the same composite picture and construe that the two were part of the same milieu. This contention was an after-thought as it was not put forward in the *Lower Court*. (AP)

See Doc. 7.

6: Government of India to the Government of Bombay — Regarding grants to AISA-AIVIA

File No. 4/3/43 – Home Poll (I)

[NAI]

Home Department
D.O. No. F4/3/43 – Poll

Secret

dt 9th Aug. 1943

To
H.V.R. Iengar, Esq., CIE, ICS,
Addl. Secy. to the
Government of Bombay,
Home Department
Bombay

My dear Iengar,

We have received your No. S.D.V./6201 dated 12th July¹ 1943, in reply to our letter of 10th May² about action against the A.I.S.A.³ and A.I.V.I.A.,⁴ and we note that you propose continuing your existing subsidies to various branches of these associations.

2. Our recommendation that subsidies granted to these organisations should be discontinued was based not so much on specific information as to the misuse of grants received as on the general consideration that these bodies are an integral part of Congress and that in many cases persons connected with them are known to have taken active part in furthering the Congress movement. We cannot help feeling that any assistance given to these organisations is in fact indirect assistance to Congress; and though the final decision rests of course with the provincial Government, we would nevertheless repeat the advice given in our letter of 10th May that all such grants should be discontinued.

Yours sincerely,

Signed
Addl. Secy.

¹ Doc. 70 in Chapter I Section B.

² Not printed.

³ All India Spinners' Association.

⁴ All India Village Industries Association.

7. Judgement of Justice Lodge in the Pollard case: R.C. Pollard – Accused v. Satya Gopal Mazumdar [Derbyshire C.J., Khundkar and Lodge J.J. – Special Bench (24.8.1943)]

AIR, Vol. 30, 1943, Calcutta, p. 594

Criminal Revn. No. 418 and Criminal Revn. Case No. 706 of 1943, decided on 24th August 1943.

[Two cases were discussed in this Special Bench, in both of whom R.C. Pollard, Supdt. of Police, Murshidabad, was a party. Crim. Revn. Case N. 706 of 1943 (the Jiaganj rice looting case), and Crim. Revn. Case No. 418 of 1943. 'Satya Gopal Mazumdar v. R.C. Pollard. We have omitted Derbyshire's and Khundkar's judgements, which dealt mainly with the former. Lodge's judgement against Gupta's verdict is given below. – Ed.]

Lodge J. – I was one of the Judges who issued the rules on the Government of Bengal on 19th July; and at that time I stated in open Court that I personally would not hear the matter, but I do not remember the exact words I used. I took the first opportunity of informing my Lord the Chief Justice that I had been formerly in the same Mofussil Station as Mr Pollard and had, therefore, had the ordinary contacts with him. On 22nd July when the letters were produced by the Government of Bengal, Mr Carden Noad, counsel for Mr Pollard reminded me that it was nearly ten years since I had been in the same station with Mr Pollard and that at that time Mr Pollard was a very junior police officer whereas I was even then a fairly senior Judge. I was stationed in Mymensingh at that time and though Mr Pollard and I were both members of a very small European Community in the Station and met from time to time, there was no friendship between us. I left Mymensingh in 1943 and to the best of my recollection I have not spoken to Mr Pollard since. When these facts were revealed in Court, Mr Talukdar, Advocate for the complainant in the Pollard case, assured me that his client would be very glad if I were one of the Judges who should hear the rule. Mr Carden Noad, counsel for Mr Pollard, gave me the same assurance. In view of these assurances and in view of the fact that there had not in fact been any friendship between Mr Pollard and myself I contented myself with placing all the facts before my Lord the Chief Justice and leaving the matter in his hands.

The material questions for consideration in the Pollard case are two: (1) Was the Court entitled to take cognizance of the alleged offence in view of the provisions of S. 197, Criminal P.C.? (2) Has the accused had a fair trial? The Courts below have taken the view that the question whether S. 197, Criminal P.C., is applicable or not must be decided by reference only to the statements made in the petition of complaint. Mr Talukdar for the respondent has stoutly supported the view and has cited the case in 30 C.W.N. 288, in support thereof. If this view is correct, any complainant can evade the provisions of S.197, Criminal P.C., by suppressing material facts when making his complaint, and so render the section of no effect. I cannot believe that such was the intention of the legislature. It seems to me that the phrase 'take cognizance' in S. 197, Criminal P.C., must be the same as 'hear and determine' and that consequently as soon as a Court is satisfied that the alleged offence was committed (if at all)

while the officer was acting or purporting to act in the discharge of his official duty he shall drop the proceedings. I am unable to agree with the decision in 89 C.W.N. 288. In my opinion the Courts below should have determined this question of a consideration of the whole evidence and also of certain additional facts which were so notorious that the Courts ought to have taken judicial notice of them. In my opinion the courts below failed to consider all the material facts and indeed failed to apply judicial minds to the determination of this case.

The defence alleged that after the arrested students were taken to the compound of the Superintendent of Police's bungalow, the complainant tried to enter into conversation with them. He was told to leave the premises, but instead of doing so, he approached Mr Pollard. When Mr Pollard told him to go away, the crowd began to demonstrate, shouting 'Khabardar', 'Bande Mataram', 'Zindabad Inquilab' and throwing stones. Thereupon Mr Pollard rushed out, seized the complainant and hustled him away. The defence denied that Mr Pollard slapped or kicked the complainant. To prove his case the complainant examined four other eye-witnesses besides himself. The defence also examined eye-witnesses. The learned Sessions Judge observed that some of the defence witnesses were police officers, and another of them was also a Government Servant of another department. The learned Judge discarded the evidence of these witnesses on the ground that they were partisans. The learned Judge however omitted to remark on the facts that the four prosecution eye witnesses were all students, that the arrested persons were students arrested for a political crime, that the demonstrating mob outside the compound was composed largely of students, and that though the complainant immediately after the occurrence took the names of shop keepers and others as eye-witnesses, he selected only students to give evidence as such. In my opinion the learned Sessions Judge had no more justification for regarding the defence witnesses as partisans than for regarding the prosecution witnesses in that light.

The learned Sessions Judge noted that one defence witness said that cries of 'maro', 'maro' came from the mob, and he rejected the evidence of this witness on the ground that he was '*plus Royaliste que le roi*'. One of the prosecution witnesses went further than the complainant and said that Mr Pollard shouted 'nonsense, kick him out'. But being a prosecution witness the criticism '*plus royaliste que le roi*' was not applied to this witness who was regarded as wholly reliable. In short, it seems to me that the learned Sessions Judge applied entirely different standards to the two sides and his findings of fact are therefore in my opinion unconvincing.

If, however, this was the only defect I should be reluctant to hold that this Court would be justified in interfering in revision. But there is the additional fact that the learned Sessions Judge shut his eyes to notorious facts which were relevant in determining whether section 197, Criminal P.C., was applicable. The learned Sessions Judge treated the matter as though times were normal, and ordinary prisoners were being detained and though the mob outside was a mere crowd of sightseers shouting comparatively harmless slogans. This is such a travesty of the true state of affairs that I am unable to understand the learned Session Judge's outlook. The undoubted facts are that in September 1942 there was open rebellion in parts of the country, that Government buildings were being attacked and Government officers murdered not many miles distant from Berhampore. In many places where Government officers hesitated to take firm action gruesome tragedies occurred.

The attempt on the District Judge's buildings on 9th September by students shouting revolutionary slogans must have seemed to the local police to be part of that rebellious movement. The fact that the crowd followed the police after the arrest of the students, and at once began to demonstrate when the Superintendent of Police ordered the complainant

away must have tended to confirm that view and it must have seemed to the police that weakness at that time was likely to have dangerous consequences. I have no desire to suggest that the complainant's conduct was illegal, or that an assault on the complainant was justified under any of the provisions contained in Chapter 4 Penal Code. On the other hand, the complainants' insistence on remaining in the compound after being told to go was ill considered and untimely, and did in fact operate to excite the mob further. His continued presence was undoubtedly an embarrassment to the police, and I have no doubt that the police would have been justified in forcing him to go if necessary. I do not suggest that the police would have been justified in slapping and kicking him. The complainant has never suggested that Mr Pollard had any private grudge against him or was wreaking any private vengeance. Indeed, the complainant's clear case is that Mr Pollard, as a policeman, resented the complainant's insistence on making representations about the arrested persons and put an end to those insistent representations by an unprovoked and unwarranted assault. It seems to me clear that however unjustified Mr Pollard's conduct may have been, there can be no doubt that he was not acting in any private capacity but was acting in discharge of his official duties.

The argument before us was that it was not Mr Pollard's duty to assault the complainant, and therefore Mr Pollard was not acting in discharge of his duty when he assaulted him. I am unable to accept this view. This argument seems to me to confuse S.197, Criminal P.C., with S.79, Penal Code Section 197, Criminal P.C., bars a prosecution in respect of an offence and therefore supplies when an offence has been committed. That is to say, it applies when the public officer does something more than his duty, something which is not his duty – provided that he does not while he is acting or purporting to act in the discharge of his official duties. It has further been argued that if the whole trial has been vitiated owing to the fact that pressure was exerted from outside and may have influenced the Magistrate in his decision, the evidence on record should be entirely ignored and the case sent back for retrial and for reconsideration of the question whether S. 197, Criminal P.C., is applicable. This argument seems to me unsound. Even if the proceedings are set aside the fact remains that the Magistrate had jurisdiction to record evidence for the purpose of determining whether Section 197, Criminal P.C., was applicable. The evidence was presumably read over to the witnesses and admitted by them to have been correctly recorded. The complainant has contended before this Court that there was a fair trial in other words, that the evidence on record represented accurately what the witnesses said. It is obvious, therefore, that the evidence on record does represent accurately the complainant's case and furnishes material on which the Court is entitled to decide whether S. 197, Criminal P.C., is applicable or not. I am definitely of the opinion that, assuming that the prosecution evidence is accepted, the present case is one governed by the provisions of S. 197, Criminal P.C. and that the Magistrate had no jurisdiction to hear and determine the matter in the absence of a sanction from the Local Government, and that the learned Sessions Judge was wrong in law in holding that s. 197, Criminal P.C., was not applicable.

With regard to the question whether or not the accused had a fair trial in this case I agree entirely with the judgement given by my Lord the Chief Justice. In the result therefore in my opinion this rule should be made absolute, the conviction and sentence should be set aside and no further proceedings should be taken in regard to the prosecution unless and until the Local Government gives sanction. With regard to the Jaganj case I agree that for the reasons given by my Lord the Chief Justice the convictions and sentences should be set aside and a retrial ordered.

Order accordingly

8. District Magistrate, Midnapore to the Additional Secretary, Government of Bengal

Government of Bengal (Home) File No. W/545/43
[Bengal state Archives]

Midnapore,

The 21st September, 1943

Dear Mr Porter,

Please see the enclosed note from the S.P. who wants to have political cases triable exclusively by Sessions Court tried by some other procedure. I do not know if it is possible for the Government to set up Special Tribunals for this district now, when the original special tribunal set up under Ordinance No. II have been abolished or whether a Special Tribunal can be set up under any of the other acts which were in force in Bengal to deal with the terrorist movement. I have also requested S.P. to send up a list of cases of a political nature so that the Government may withdraw Jury trial in respect of those and trials would be by Assessors.

Yours sincerely,

F.O. Bell

A.F. Porter, Esq., I.C.S.,
Addl. Secretary to the Government of Bengal,
Home (Political) Deptt.

Enclosure

Official Notings by Court Inspector and S.P. of Midnapore —
Regarding Trial with the Aid of Assessors

S.P.

With reference to the D.O. of D.M. (No. 1841 C dated 6-9-43¹) I beg to submit that trial with the aid of assessors will be helpful and beneficial in these political cases. But in my humble opinion trial with the aid of assessors in the court of Mr K.K. Hazra (Hajara), I.C.S., will not perhaps improve matters much. I can cite for instance the case of Pashupati Roy, the Judge gave more or less a charge of acquittal. I attended the Sessions Court and the verbal charge as I heard gave me this impression. But in this case, the jury returned a verdict of guilty u/s 380 I.P.C. and the accused were convicted accordingly.

Now, if this had been a trial with the aid of assessors, the Judge could have refused to accept the verdict. Trial with the aid of assessors is more or less one man's show and if that one man does not enjoy confidence of any party the result is likely to be very disastrous for the party not enjoying his confidence.

I do however take note of your order in Memo No. 231 (14) S.P. dated 10-9-43² and shall comply with the same when such cases of commitment will occur.

M.O.S.
D.N. Dasgupta
Court Inspector
Midnapore

D.M. (by name)

I am inclined to agree with the Court Inspector's view, but I think we should try trial by Assessors and if it fails our case for a change of Judge will be strengthened.

In the meantime the question of the trial of the political cases by a Tribunal might be considered and Government approached for their sanction.

J.H.C. Cowgill.
S.P. Midnapore
18.9.43

1 and 2. Not printed.

9 Official Notings regarding setting up of Special Tribunals (dt 23.9.1943-19.10.1943) (extracts)

Govt. of Bengal (Home) File No. W/545/43
[Bengal State Archives]

D.O. Letter No. 1928 C. dated the 21.9.43,¹ from the District Magistrate, Midnapore.

Examine, I do not think that Chapter III has been brought into force yet.

Signed
23.9.43

The District Magistrate of Midnapore has submitted separately a proposal for trial by Assessors instead of Jurors, of certain political cases pending in that district. The matter is being considered in the Political Branch.

2. Under Section 8 of the Defence of India Act, 1939, Special Tribunals may be constituted on a regional basis and under section 9 of the Act, the Provincial Govt. may order the Trial of any particular case or any class of cases as provided in that section by such Tribunals. Political cases can be so tried by such Tribunals when the offence is punishable with death, transportation or imprisonment for a term which may extend to seven years. The Act which contains the provisions for special Tribunals, has not yet been brought into force. The observations in the Govt. of India, Defence Coordination Dept. Letter No. 264-OR/39-C C. (D.C.) dated the 3-11-39,² particularly paragraph 6, may be seen in this connection. If it is proposed to move the Govt. of India for bringing Chapter III into force, the Dist. Magte., Midnapore, will have to make out a case for it. Submitted for orders.

Signed
27.9.43

It does not appear to me that a very strong case has been made out and unless the number and nature of cases which the proposed tribunal will be called upon to try, are known and

the reasons precisely for substitution of the ordinary Courts by special tribunal stated, it is not possible to make out a strong case. The present request arises more out of a grievance against a particular Dist. Judge which can be remedied by a change. The results of a change over to trial by assessors may also be awaited. Add. Secretaries I & II may see.

Signed
28.9.43

I agree with Asst. Sec. on the facts stated – which have a particular not a general, application – I doubt if there is a case for setting up Tribunals, in a single district. Addl. Sec. should see.

E.R. Kitchen
Signed
28.9.43

I am not really concerned. This may go to A.S.

P.D. Martyn
Signed
30.9.43

I agree with A.D.S.

So do I, The D.M. may be informed. What is really required is a tough judge there:

Williams
4.10.43

1 Doc. 8

2 Not printed.

10: Home Department, Calcutta to the District Magistrate, Midnapore – Regarding Special Tribunals

Govt. of Bengal (Home) File No. W/545/43
[Bengal State Archives]

Confidential

Home Department,
Calcutta

P.O. No. /523 P.5

The 9th October 1943.

My dear Bell,

Kindly refer to your demi-official Letter No. 1923 C., dated the 21st September 1943.¹

Government have considered the tentative proposals which you made therein, but they feel that difficulties which you are now experiencing are due not so much to any particular

form of procedure as to the lack of toughness of fibre in the judiciary at Midnapore.² The matter has been referred to the Appointments Branch and the question of stiffening the courts in your district by the posting of a suitable officer is being examined.

Yours sincerely,
(C.I.M. Arnold)

F.O. Bell, Esq., I.C.S.,
District Magistrate, Midnapore.

1. Doc. 8.
2. This was a criticism of the District Judge, Karuna Kumar Hajara, I.C.S., who was shortly after transferred to North Bengal Districts of Darjeeling, Jalpaiguri & Dinajpur. The spelling of his surname in Document No. 8 as 'Hazra' is not uncommon mistake in transliteration. The person referred to actually spelt his surname as Hajara — Ed. (based on information given by his family)

11: Government of India to the Government of Bombay — Grants to AISA and AIVIA

File No. 4/3/43 — Home Poll (I)
[NAI]

Serial No. 27
No. 4/3/43 — Poll (I)
Government of India
Home Department

From
Sir Richard Tottenham
Additional Secretary to the Government of India

To
The Secretary to the Government of Bombay,
Home Department, Poona

New Delhi, the 1st Nov. 1943

Sir,

With reference to your express Letter No. S.D.V. 1-6201, dated 12th July 1943,¹ regarding action against the All-India Spinners' Association and the All-India Village Industries Association, in the final paragraph of which the Provincial Government indicated that it did not propose to discontinue the subsidies granted to various branches of these Associations in the Province, I am directed to say that the Government of India have now received the replies of all Provincial Governments to the Home Department letter dated 10th May 1943, in the final paragraph of which they strongly advised that all such grants should be terminated.

2. The remaining Provincial Governments are unanimous in accepting the Government of India's advice that in the present circumstances subsidies to these organisations should be

discontinued, while the replies received furnish ample further material in support of the view that both these organisations were repeatedly used to further the Congress subversive movement. Thus the entire organisations of both the Associations are reported to have been used for this purpose in the United Provinces, while numerous branches of the Associations were similarly used in Bengal, Bihar and Assam. In addition to these Provinces, members of the Association took part in subversive Congress activities in the Punjab, Sind and Delhi.

3. It is well known that both the organisations operate under a unified central direction and the Government of India consider it in the highest degree improbable that the various branches of the Associations should have been heavily implicated in the Congress movement in every other Provinces in which the movement attained real force, and should yet have remained entirely unaffected in Bombay. In view of the unanimous acceptance of their views on this subject by every other Provincial Government, the Government of India must ask the Government of Bombay to re-examine this matter and inform them at an early date whether it wishes to maintain the attitude adopted in its letter of 12th July 1943.

I have the honour to be,
Sir,

Your most obedient servant

R. Tottenham
Addl. Secy. to the Govt. of India

1. Doc. Not printed.

12. Government of Bombay to the Government of India – Reply to the letter dated 1.11.1943 (Doc. 11)

File No. 4/3/43 – Home Poll (I)

[NAI]

Home Department (Political)
Bombay Castle, 16th November 1943

Secret

From
H.V.R. Iengar, Esquire, C.I.E., I.C.S.,
Secretary of the Government of Bombay
Home Department

To
The Secretary to the Government of India,
Home Department

Sir,

I am directed to reply to your Letter No. 4/3/43 – Poll (I) dated the 1st instant, regarding action against the All-India Spinners' Association and the All-India Village Industries Association. The

Government of India consider that in view of what has happened in other Provinces it is in the highest degree improbable that branches of these two Associations in Bombay should not have been implicated in the civil disobedience movement. I am to point out that the decision of the Government of Bombay was based on reports from district officers who had been warned that branches of these Associations might assist subversive activities. These reports do not indicate that branches of these Associations in this Province have been taking part in anti-Government activities.

2. I am to add that the All-India Spinners' Association and the All-India Village Industries Association in this Province have been doing good work and, in particular, have been of assistance to Government in famine areas. It seems to this Government unwise to discourage the better elements in the Congress from taking up constructive social work which is likely to distract them from mischievous political activities.

3. For the reasons stated above, the Government of Bombay has decided to maintain the attitude adopted in my letter of the 12th July 1943.

Your obedient servant,

Signed

Secretary to the Government of Bombay
Home Department

13: Government of India to the Government of Bombay – Reply to the letter dt 16.11.1943 (Doc. 12)

File No. 4/3/43 – Home Poll (I)

[NAI]

D.O. No. 4/3/43 – Poll (I)

Government of India
Home Department

Secret

New Delhi, the 26th November 1943

My dear Iengar,

Will you please refer to your official Letter No. S.D.V./-12486, dated 16th November 1943,¹ regarding action against the All-India Spinner's Association and the All-India Village Industries Association/I gathered from conversation with Symington* when he was here last week, that the Bombay Government has in fact taken action against certain branches of these Associations and that the only grants still made were to individual concerns which you were satisfied were doing good work. This rather alters the impression we had gained (perhaps mistakenly) from your official letters on the subject, from which we had gathered that the Bombay Government wished to continue to support the Associations as a whole. It was this general support that seemed to us unwise, but we agree that there is far less objection to the continuance of financial aid to selected industrial undertakings which are known to be doing good work and in respect of which there is no suspicion of any connection with subversive activities.

2. We should be glad if you would confirm that the above interpretation of your attitude is correct. If so, we think it would settle the matter satisfactorily.

Yours sincerely,

H.V.R. Iengar, Esq., CIE, ICS,
Secretary to the Government of Bombay
Home Department, Bombay.

Signed R. Tottenham
(R. Tottenham).

1 Doc. 12.

14: Government of Bombay to the Government of India – Reply to the date 26.11.1943 (Doc. 13)

File No. 4/3/43 – Home Poll (I)

[NAI]

D.O. No. S.D.V./-14175

Home Department (Special)
Bombay, 17th December 1943.

Secret

My dear Tottenham,

Please refer to your demi-official Letter No. 4/3/43 – Poll (I) dated the 26th November, regarding the grants to the All India Spinners Association and the All India Village Industries Association.

I am afraid there has been some misunderstanding of your conversation with Symington. He did not say that Government had taken action against certain branches of these particular associations; what he said was that Government had taken action against the branches of certain associations which, though ostensibly doing social work, were in fact assisting subversive activities. The particular case he had in mind was an Ayurvedic medical institution in Ahmednagar whose grant we withheld last year; and he cited it merely to show that we watch carefully even those institutions which professedly do only social work.

The grant for hand spinning is given to the branch at Hubli of the All India Spinners' Association for the specific purpose of encouraging hand-spinning in Bijapur as a famine measure. The other grants referred to in my previous letters are paid to Mr Vaikunthrai L. Mehta who is a member of the Board of Management of the A.I.V.I.A. and has taken much genuine interest in social work. We do not give any general financial support to the two parent association.

Yours sincerely

Signed

H.V.R. Iengar

Sir Richar Tottenham
Addl. Secy. to the Govt. of India
Home Department.

15: Inspection Note on the Hazaribagh Central Jail

Govt. of Bihar Pol. (Spl) Conf. File No. 19/44
[Bihar State Archives]

I visited the Hazaribagh Central Jail on the 18th of February and spend some hours inspecting the conditions in which the Security and Political Prisoners were detained in the jail and listened to their representations. The written petitions given to me by some of them are placed in the file and they should be dealt with in Political and Judicial Departments. Most of their grievances have been considered several times before and do not call for further examination or Government order. The contents of these petitions were made known in a general way to the Superintendent of the Jail and one or two petitions were made over to him for being sent up in the usual manner. I deal with the more important points in these positions and with certain oral representations made to me on the spot, in the paragraphs below.

2. *Locking up and unlocking of cells:* As far as I could judge from that I heard on the spot, there is now no serious grievance about the orders recently enforced. Subject to any comment the Inspector General of Prisons may have to make, I would ask the Superintendent to adjust from time to time the locking up hour according to sunset as under the rule it is to be one hour after sunset. If he made the adjustment once in a fortnight, it should be alright.

The Public Works Department are providing *windows* in the cells to afford cross ventilation. I understood that the work will be completed about the middle of March. The position of the windows and their size also was unobjectionable. The prisoners wanted the windows to be a little lower but this is not advisable. In the first place, if they are lowered it will open unauthorized communication between prisoner occupying the cells on each side of the wall between the adjoining wards and it will not fully serve the purpose of cross ventilation.

One grievance which was very commonly mentioned was that prisoners are not allowed to *mix with other Security Prisoners* except to the extent that they can mix with prisoners occupying the cells within the same enclosure. Knowing the construction of these cells or wards and their situation, I am of the opinion that it is not possible to provide more liberal intercourse than is at present provided. The Inspector General may, however, examine whether it is possible to construct a barbed wire enclosure by the side of these wards into which the gates of all wards might open so that the prisoners occupying the cells in one ward can be allowed to have access to prisoners in the adjoining wards by way of the wire enclosure. There is room for such an enclosure on the side where the gates of the wards are. It will be difficult to obtain the quantity of wire required. However, the question may be examined by the Inspector General of Prisons.

Another complaint was that Security Prisoners were not being allowed facilities to have *constitutional exercise* in the jail premises outside the wards. It is not possible to grant this request. It was the freedom to have exercise anywhere in the jail which was allowed to them up to November 1943 that led to the escapes. The wards themselves are sufficiently spacious and contain a fair sized strip of open ground where the number of prisoners occupying the cells in the wards can and do freely move about in day time. In these open grounds within the wards it is possible to have out-door games such as badminton and volleyball and it is

not feasible to do anything more to improve the facilities for exercise in the manner the prisoners desire.

Recently some prisoners have arrived from Motihari and they are mixed with the old Security and Political Prisoners of this jails. The Superintendent was taking steps to arrange accommodation for all these prisoners in a satisfactory manner and I have suggested to him that in doing so he should, as far as possible, see that Security Prisoners of division I are given the best of these wards, that is the wards which are built with a higher plinth level and which have larger open spaces within them.

It seemed that the prisoners appreciated the recent concession allowed to them to have lights in their cells up to 10 p.m. They now request that they may be allowed to keep their lights on as long as they like within the quantity of oil supplied to them. I see no objection to allowing this request. It will not endanger the security of the wards or cells while it will, I am sure, meet with a real grievance. The Inspector General's views may be obtained on this request before orders issue.

Regarding *food* the only real complaint is about the high prices and as to this it is impossible for Government to grant any real relief and people outside the jails are also suffering exactly in the same manner as these prisoners. The Superintendent was prepared to go to the length of having the actual contractors or their agents brought to the jail gate with their supplies in the morning and allowing the prisoners to make their purchases direct from them. If he thinks that he can do so without endangering the security of the jail, he may do so.

About *clothing*, one common complaint is that the number of dhoties *allowed* is not sufficient. This may be examined in Judicial Department. The prisoners have again raised the question of being allowed to take away with them at the time of release the jail clothing in their possession and in particular such clothing on which any amount had been spent by them from their own pocket or from the jail allowance. I do not think that it will be possible to revise the existing order on the subject but Judicial Department may re-examine it.

Another request made by the prisoners is that the *sundries allowance* recently sanctioned to them may be allowed to accumulate and the prisoners may spend it according to their need and convenience. The present system is that each month's allowance must be used up within that month or else it lapses. *Prima facie* I do not think there is any serious difficulty if we allow the request to the extent that prisoners may accumulate their sundries allowance up to say Rs 15, any excess over that lapsing to Government.

Most of the prisoners referred to the definition of *relatives* as accepted in our rules for the purpose of *interviews*. They ask that the term 'relatives' should be construed more widely. The object in accepting the restricted meaning was to enable the C.I.D. to obtain such information as they need about the relatives seeking interview. If the term is to include any relative the task of the C.I.D. will be very much heavier. We could not also introduce a practice as regards interviews very much at variance with the practice prevailing in other provinces. Keeping these two points in mind, Political Department may further examine this point. They may also examine whether any liberalization in the matter of allowing the prisoner to exchange an interview for a letter and *vice versa* is possible.

Musical Instruments is another matter mentioned by some of the prisoners. I am afraid to allow musical instruments might adversely affect discipline and it may also be a source of annoyance to some of the prisoners. If a person who is allowed the use of a musical instrument which he likes goes on playing on it at all hours or in an unskillful manner it would be a nuisance to his neighbours.

Some of the prisoners asked for being provided with heavy curtains for hanging in the door way of their cells. The Superintendent thought that he might be able to find suitable heavy material and he may do what is possible.

While improved sanitary arrangements which a certain group of prisoners asks for are out of question, the Superintendent might consider whether it is possible to provide within a ward an enclosed space where prisoners can take their bath.

A large number of prisoners wished that the jail authorities should have no power to *withhold any petitions or representations* addressed to Government, the District Magistrate, the Inspector General of Prisons or the High Court. Under our present rules Superintendents have been given power to withhold certain petitions or representations. If this power is withdrawn, it will give real satisfaction to the prisoners and it is for consideration whether the power could not be withdrawn although such withdrawal would certainly lead to increase of correspondence between the Superintendent and Government & Co. and add to the number of cases for disposal in the Secretariat or elsewhere but the point is worth reconsidering.

The prisoners referred to what is admittedly a very inadequate *provision of books* in the jail library. The Superintendent has got a grant at his disposal for purchase of books and the Inspector General of Prisons may examine need for any further grant. The prisoners wished to see a wider selection of newspapers and the inclusion of some high class periodicals in the literature supplied to them. I am afraid this is not possible firstly because of the expense and second because of the difficulty of making a selection that will please all.

The students among the Security Prisoners wished to be allowed to appear for *University examinations* – a matter which has been examined several time before and for practical reasons has been considered impossible to arrange. The decision on this point must stand.

3. The old security prisoners confined in this jail from before the 1942 disturbances, most of whom are Communists again pray that as the policy of their party is now entirely against the Axis and Japanese aggression and they have decided to support all war effort in India they should be released and given an opportunity to help Government in fighting the fifth column or the defeatist mentality on the home front and in tackling the problem of food scarcity, &c. This is a matter which deserves further consideration as the situation has undoubtedly changed since these prisoners were placed under detention and although the Communists outside jail are agitating for the release of Congress leaders, for the formation of national Government and a political settlement, they are certainly not creating any obstruction or difficulty in the war effort in any direct manner. But some of our old Security Prisoners who call themselves Communists and wish to come out are known terrorists and the whole have to be examined in the light of the recommendations which we might get about these prisoners from the Commissioners and D.I.G.'s.

4. These old Security Prisoners are kept in a separate ward quite apart from the new Security Prisoners detained after the 1942 August disturbance. But it is strange that even among themselves they have formed their party groups and they refrain from associating with each other. Their old party rivalries or jealousies have gone with them into the jail also. An evidence of this is to be found in the petition handed over to me by Sadhona Gupta. We are not concerned with their party politics and Government cannot for administrative reasons change the policy of keeping the old Security Prisoners apart from the new ones. The old Security Prisoners complained that the ward in which they are kept is the most unhealthy part of the jail. Whether this is actually so is a matter for the jail authority to decide. I could see that there were many open drains crossing this yard and the ground also had not been properly

levelled, it seemed. I would suggest that if possible as the number of new Security Prisoners goes down and accommodation becomes available in their wards one of the latter might be used for the accommodation of the old Security Prisoners.

5. I inspected the *hospital* in the jail. I understand that the Inspector General of Civil Hospitals who recently visited it has condemned it and its arrangements on several grounds and what little I saw of the place convinced me of its unsuitability and of the need for improvement in every direction. The proposed new building should be constructed as speedily as possible and the equipment of the hospital improved to the extent the Inspector General considers necessary. It is needless for me to go into the details or the shortcomings of the present hospital arrangements.

6. A large number of Security Prisoners expressed themselves very bitterly in connection with steps taken for the provision of *spectacles*. It appears that some months ago some expert or optician from Patna visited this jail under orders of Government and prescribed spectacles for certain prisoners. The spectacles took long to arrive and either because the original examination was defective or because the eyesight of the prisoners concerned had deteriorated during the interval, some of the spectacles were found to be unsuitable. The prisoners say that in spite of their repeated requests to be provided with proper fitting spectacles nothing has been done. The supply of a spectacles to each and every Security Prisoner needing them is an expensive affair. At the same time it is the responsibility of Government to make arrangements for the examination of suffering prisoners by an expert and for the prescription provision of the required spectacles. If within the knowledge of Government a prisoner is in a position to afford the cost of the spectacles he should be asked to pay for them himself otherwise Government must pay whatever the cost may be. A report may be called from the Inspector General of Prisons explaining to Government how the matter stands.

7. I now come to the individual cases of certain prisoners who I saw.

Babu Harihar Singh asked for early orders on the report which has gone from the jail saying that he is in need of an operation for hydrocil.

Babu Shyama Prasad Singh wishes to be transferred to Bhagalpur on the ground that the climate of Hazaribagh does not suit him and he also wants a change of spectacles.

Babu Madhusudan Agarwal of Lohardaga says that he has given an undertaking that he will not take part in anti-government or subversive propaganda and requests to be released.

Babu Lachhmi Naryan Singh has not yet heard what orders were passed on his petition to be released on parole on the ground of his father's illness.

Babu Jugal Kishore Singh M.L.A. His is a curious case. He belongs to Gaya and says that the police report that he was absconding is all mistaken. Even after the outbreak of the August disturbances he was leading his normal life and moving about in public and even attending meetings called by local officers. According to him, therefore, to say that he was absconding and secretly taking part in subversive activities was all wrong. In any case, his present health is poor and he requests that Government should re-examine his case and release him. Chief Secretary may examine the papers.

Babu Ramanand Chaudhury of Darbhanga, a convict, wishes to be transferred to any jail like Darbhanga, Muzaffarpur or Bhagalpur as the climate of Hazaribagh does not suit him. The same prayer was made by Dwarka Nath Tiwari, formerly a convict but now a detenu under rule 129. He is willing to go away from Hazaribagh even as a Division III prisoner.

Babu Bir Chand Patel of Hajipur asks for a maintenance allowance for his mother.

Babu Hargobind Misra of Arrah, like some other prisoners, pressed for transfer as

Hazaribagh does not suit him and he is losing his sleep. He also repeats his old grievance that his business interests at home are suffering owing to his absence as there is no one else who can look after them. Subject to what the Commissioner and the D.I.G. may report, his case seems to be a fit one for release.

Babu Baikuntha Nath Singh Chaudhury has cataract in his eye and says that he should be sent to Patna to have it extracted but the Civil Surgeon of Hazaribagh is competent to do this operation and simply because the prisoner wishes to go to Patna for it there is no reason to oblige him.

I have already dealt with the case of A Lachwi Sinha on another file.

Budhan Rai Varma of Shahabad who seemed to be in particularly good health has given a petition on behalf of several of these prisoners and is placed in the file.

Puneyadeo Sharma was another prisoner seemed to be none the worse for imprisonment.

Babu Jhadu Das asks for the facilities for the treatment of his eye. This prisoner is about 58 years old and had recently taken to a life of public service and had often gone to the length of doing the work of a sweeper. It seems to me that he would be a harmless fellow in the present state of his mind. He was convicted on the 3rd of October 1942 and awarded a sentence of 1.5 years, so that he is due to be released early in the month of April next. I think Government may safely release him now and thereby enable him to get his eye treated wherever he likes, as a free man.

Baleshwar Prasad Singh of Ruppur, District Shahabad, a young man of 25. He was convicted under section 431 read with section 109 I.P.C. and the Arms Act. Prays for Government clemency. It appears that his release is due in 1946. Political Department may send for the record of the case and see whether it is a fit case for showing clemency.

Ramanandan Misra of Darbhanga, one of the prisoners who escaped from this jail in September 1942 and was arrested in the Punjab has been received in the jail and is now awaiting trial for the escape. As a prisoner he had once escaped from jail, he is being detained in solitary confinement with link footers on his legs. There is also a charge pending against him of having secreted in a coat of his a note of Rs 100 when he was received in this jail from the Punjab. Ramanandan Misra mentioned that he had been cruelly tortured by the Punjab police over a long period so much so that his heart has been affected. His prolonged solitary confinement is likely, so he fears, to affect his mind. He sometimes gets fits as a result of his weakness and what he has gone through. The prisoner says that he has sent a petition against his treatment in the Punjab to the Lahore High court, orders on which he is still awaiting. Whatever that may be, it is now for the consideration of this Government whether he must be kept in solitary confinement and in fetters. He has not been allowed any interviews for a long time and all his correspondence has been stopped. I think the best plan will be to have him tried for the jail escape case and the charge for having Rs 100 note with him in a concealed manner and then removed to some other jail. On arrival there it may not be necessary continually to keep him in solitary confinement or to put him in fetters and this suggestion may be made to I.G. Prisons for consideration.

Promatha Mukherjee who has been suffering from pleurisy asks for special treatment. We may ask the Inspector General of Prisons to report whether it is necessary to transfer him to Patna for such treatment.

Basanta Chandra Ghosh, an Advocate, has a long list of grievances. A petition handed in by him is placed on the file. So is the petition of Sadhona Gupta. Apparently this prisoner's health is very bad. But it may not be necessary to transfer him though he asks

for it. Unless Judicial Department have any recent medical report on this prisoner, one may be asked for.

Kedarnath Shandilya who had been on parole once before requests for release on parole once more on the same old ground of his wife's illness. This is for Political Department to consider.

S.B. Kar who suffers from apoplexy has been six months in hospital. Even though the medical board has reported that his release is not necessary I still consider it to be a fit case for immediate release.

A.C. Ghosh, aged 63, is a heart patient and has been in hospital for three months. It is another case which political Department might take up for consideration for release.

Shah Mohammed Omair — I have already noted on him in another file.

Prof. Abdul Bari prays for expert treatment at Itki or Patna and says that if Government do not see their way to release him he may be interned at either of the two places and allowed expert treatment. His case shows early symptoms of T.B. as I could gather from his medical attendants and his history ticket in the hospital.

Sirish Chandra Banerjee, aged about 50, is having heart trouble and has been in hospital for about 10 months. This is another case where release may be considered by Political Department. The case of one Salim from Chapra has already been examined in Political Department. He is prepared to give any undertaking Government wants and asks for release to enable him to look after his own health (he is suspected of T.B.) and provide adequate treatment for his wife who is reported by the Chapra authorities to be suffering from T.B.

Mr Satya Naryan Singh, M.L.A. Central, and Mr Anugrah Naryan Sinha, late Finance Minister, saw me and represented several grievances of the Security Prisoners as a whole. Before dealing with them I would mention that I found Mr Satya Naryan Singh to be in good health. At the time of my visit Mr Anugrah Naryan Sinha was free of the complaint of acute headache, &c. from which he often suffers. The special treatment prescribed for him by the Medical Board, viz. preparation of auto-vaccine from his nasal discharge had not yet been started as since the examination by the Medical Board the nasal discharge which accompanies the headache has not recurred. Some of the grievances mentioned by them have already been dealt with here above and I will now take up only those which remain to be considered. They say that for the occurrence in the jail on the last Independence Day the Superintendent had without any enquiry as to who were the offenders withdrawn and withdrawn for an indefinite period, the concessions in the matter of correspondence, interviews, supply of newspapers, &c. from all security Prisoners. Mr Satya Naryan Singh and Mr A.N. Sinha say that this is unjust to those Security Prisoners who took no part in the demonstration and it would not have been difficult for the Superintendent to find out who the offenders were if he had made any attempt to do so. That no enquiry was made is true. The Superintendent's statement was that more or less all security Prisoners were concerned in the affair directly or indirectly. Whatever that may be, he has now modified the original order of withdrawal for an indefinite period by restricting it to one month only. As regards correspondence, these two prisoners urged that the interpretation of the expression 'member of family' contained in our Security Prisoners Rules should be widened. They say that some prisoners have no male relations who would come within our present interpretation of 'Member of family' and there are some other prisoners in whose families the only male member are little children or minors. They therefore, say that in cases like these, the prisoners should be allowed to have correspondence with a particular person to be named by them though not coming under the expression 'member of

family' or any other person who is acting as a guardian to the family. Presuming their point, they said that Security Prisoners should not be placed in a position worse than convicts so far as correspondence is concerned. This may be examined in Political and Judicial Departments. Referring to the clothing allowance, they mentioned that the allowance in favour of political convicts is more liberal than in the case of Security Prisoners which, in their opinion, is anomalous, they want the latter to be raised. This is another point which may be examined.

I saw Dr Jadu Gopal Mukherjee, a detenu from Ranchi. It is clear from my personal knowledge that this detenu's health has deteriorated since August 1942. He requests that if Government do not see their way to release him unconditionally they may intern him in Ranchi so that he may resume his practice there and also treat himself for his old complaint of diabetes for which the best remedy is a particular dietary which cannot be supplied in jail. He states that his association with the terrorists of Bengal is a very old story and it is long since he was released by the Government of Bengal on a kind of understanding arrived at a personal discussion with a member of the Bengal Government that he was to sever all connection with the terrorists and to proceed to Ranchi and establish himself there and practice as a Doctor. Since then, so his case is, he has observed his part of the understanding and confined himself to his professional activities. I had heard of this from him even when he was a free man and I have always been of the view that this Doctor should be released and put on his honour and given the opportunity of serving the public of Ranchi who all appreciate his professional services very highly. His papers with what I have said above should again be placed before H.E. for orders. Referring to the general conditions under which the Security Prisoners were detained in Hazaribagh one of the suggestions made by Dr Jadu Gopal Mukherjee was that the correspondence of detenu's relating purely to business matters should not be counted against the number allowed by our rules. On this the Superintendent of the Jail informs me that purely formal and business letters such as acknowledgment of a parole or an order for a book, &c. were in fact not being counted against the prescribed allowance. This detenu like several others also urged that the Medical Board which Government have recently introduced should comprise members having an independent status and not in any way subordinate to the Inspector General of Civil Hospitals.

Babu Phanindra Datta requests that the maintenance allowance given to his family may be increased. I know that this man was doing real public service at Sonathi in the district of Muzaffarpur where he was running a charitable dispensary and organizing valuable rural reconstruction work such as irrigation bands, &c. Had inspected his work myself when I was Registrar of Cooperative Societies and I think Mr Datta seems to be anxious that his work at Sonathi should not be ruined in his absence. As the work was of a high order, we may ask the District Magistrate of Muzaffarpur to see what the present position is and, if possible to induce any local organisation like the District Board to take it up or help it. We may also ask the District Magistrate to report whether the allowance given to his family is adequate.

Messrs Madan & D.N. Shaw of Jamshedpur and Gyan Shah of Patna spoke to me jointly on several matters one of which was that persons seeking interviews with detenus and coming from distant places are required to bring with them an identification certificate from a responsible local authority. They say that this is causing serious difficulty and they wondered whether a mere certificate of identity served any useful police purpose. This is a matter which Judicial Department may take up with the Inspector General of Prisons and Political Department.

8. The main grievance of the old Security Prisoners is that they are not treated in the same way as the new Security Prisoners. I think in this respect the Provincial Government are

guided by Government of India's instructions but this may be verified. Both old and new Security Prisoners asked for a more liberal allowance of furniture and requested that such of them as had not got mosquito nets of their own might be supplied with them by Government.

Security Prisoners Jagannath Prasad Singh, Gopalji Thakur and Mahendra Bharathi asked for increased family allowances and Kamal Nath Tiwari wishes to be sent to the Patna General Hospital for treatment of his fistula.

9. Mr Snadden, who has been in charge of this jail for about six weeks, seems to have got the situation in hand. I have assured him that any reasonable action taken by him to maintain discipline and enforce the rules made by Government will have the support of Government. I have also advised him that whenever, without sacrificing any principle or without violating any rule, he can meet any reasonable request of Security Prisoners, he may do so within his discretion. If by doing so he can impress on the prisoners that he does not wish to be unduly harsh and if it will in any way help the smooth and efficient administration of the jail.

Signed Y.A. Godbole,
26.2.44,
Adviser,
Patna,

The 26th February 1944.

Copy forwarded to the Governor's Secretary/Chief Secretary/Judicial Secretary/Commissioner of the Chota Nagpur Division/Deputy Commissioner, Hazaribagh.

Signed Y.A. Godbole,
Adviser.

The Chief Secretary.

16: Extracts from Fortnightly Report from Bombay for the first half of April 1944 – Congress resolution not to help the Govt.

File No. 18/4/44 – Home Poll (I)
[NAI]

Reference was made in my last letter to the sweeping victories of the Congress in local body elections in Gujarat. These bodies have now decided not to function. The Surat municipality for instance has passed the following resolution. It is quoted in extenso to show the temper of Congressmen in Gujarat, several of them recently released from prison.

'Whereas the Indian National Congress assured the United Nations that –

[Hardly necessary to quote all this – R. Tottenham]

- a) the demand for Indian independence and the formation of National Government was made not with a view to help but to resist aggression, and
- b) the Indian people are anxious not to embarrass in any way the defence of India, China and Russia, or the war efforts of the United Nations in general, and whereas, the Indian

National Congress appealed to Britain and the United Nations to define their war aims and to declare India as a free sovereign country.

And whereas all shades of public opinion have been insistently demanding the establishment of popular National Government, responsible to the people of this country, both for the Centre as well as the Provinces in India, as an earnest attempt of British sincerity, that the United Nations are really fighting the present war for the case of freedom.

And whereas, instead of peaceful negotiations with leaders of public opinion, the Government adopted a policy of repression with a view to crush the Indian National Congress the most popular organisation serving for power for the whole people of India;

And whereas, the same policy of repression going the length of making even the highest judicial functionless as against the irresponsible executive with unwarranted suppression of all civil liberties is continued even now with total disregard of the public opinion in the country;

And whereas, in the absence of popular National Government effectively representing all the people of India, there is widespread economic distress, particularly in the matter of food and clothing entailing untold hardships and privations to the people of this country;

And whereas an overwhelming majority of the electorate has returned its representative to this board on the special issue and for the specific purpose of supporting the National Demand for an immediate establishment of popular National Government which will function in the interest of Indian people as a whole;

And whereas, local self-Government being an integral part of National Self-Government, the electorate has supported the said demand to enable this Board to function properly and adequately in an atmosphere of full freedom, and as a part of a fully National Government enjoying complete independence;

Be it resolved that under the circumstances broadly stated above.

1. This board is definitely of the opinion that as steps are not taken to negotiate with Mahatma Gandhi and other leaders of public opinion to create the political atmosphere contemplated in the preamble of this resolution this Board feels that no Local Self Government institution can discharge its normal functions in the true interests of the people with independence and self respect; and that this Board, inclusive of its president and Vice-President, shall cease to function forthwith and that this Meeting do stand adjourned sine-die.
2. The President is requested to forward this resolution to the proper quarters.

It is likely that all other bodies in Gujarat will do likewise.

17. Extracts from Fortnightly Report from C.P. & Berar for the first half of May 1944

File No. 18/5/44 - Home Poll (I)

NAI

The All-India Village Industries Association propose to hold a training class in Wardha next July in which instructions will be given in oil extraction and paper making. Mr R.K. Patil,

who recently resigned from the India Civil Service, presided over the Shetkari Sangh Congress in the Chanda district and said that Government officials could only approach people to give a surplus grain and were not authorised to compel them to hand over their entire stock. He, therefore, advised cultivators to refuse to assist in the removal of grain taken from them forcibly and to show resentment by seeking redress in a court of law.

18: Deputy Commissioner of Police to Addl. Secretary Govt. of Bengal

Govt. of Bengal, I.B. File, File No. C.S. 55/276/44
[Bengal State Archives]

Memo No I. 583/44C dated 27.5.1944.

Addl. Secretary to the Government of Bengal
Home Department, Jails Branch

I would be obliged if you would refer to Government Home Jails Department Memo No. 3846 H.J. dated 15th Nov. 1941¹ to the Inspector General of Prisons. In this communication the following rules are prescribed for conducting interviews of Security Prisoners with their relatives and friends at jails. The following is a quotation:

The interview will be held, where this can be conveniently arranged, across a table (not less than seven feet in length) in a special part of the jail, preferably in the office room. The long side of the table will be against a wall and the prisoner and the interviewer will sit facing each others opposite ends of the table. There will be a screen partition on the lower part of the table on both sides so disposed that no article may be passed from one to the other underneath the table. An officer of the Jail will always be present to supervise the interview.

I understand from the Superintendent of the Presidency Jail and Officers of this Branch employed there on duty, that there are no special arrangements of any kind for interviews in that particular institution. The General Jail officers or even the Superintendent's own office are utilised, with very apparent disadvantages; prisoners, both male and female get the opportunity to mix, together, direct contact between visitors and prisoners, which should be obviated, is possible. There is no proper control over the conversation, and official papers, which prisoners should not see, may come to their notice on the office table.

The Superintendent and I are in complete agreement that special accommodation should be set aside or, if not available, built for such interviews and furnished as directed in the Govt. memo described above and I would be very much obliged if action be taken at once in this important matter.

P. Barnes
Deputy Commissioner of Police
Special Branch, Calcutta

Copy forwarded to: Superintendent Presidency Jail

GOVERNMENT OF BENGAL.
Home Department
Jails Branch

To
The Inspector-General
of Prisons, Bengal

From
A.E. Porter Esq., ICS
Addl. Secy. to the Govt. of Bengal

Memo No 3846 HJ dated Calcutta, the 15th Nov. 1941.

Subject: Interview arrangements for Division I prisoners, under trial prisoners who are likely to get Division I classification on conviction and persons detained under rules 129 and 26 of the Defence of India Rules

Ref: Memorandum No. 4665, dated the 2nd May, 1941.

The undersigned is directed to convey the approval of Government to the following provisions for the interviews of Division I convicts, Division I, under trials who are likely to be classified Division I, on conviction and persons detained under rules 26 and 129 of the Defence of India Rules (except those who are subject to the provisions of Rule 72 of the Bengal Security Prisoners Rules). The Interview will be held, where this can be conveniently arranged, across a long table (not less than seven feet in length) in a special part of the jail, preferably in the office room. The long side of the table will be against a wall and the prisoners and the interviewer will sit facing each other at opposite ends of the table. There will be a screen partition on the lower part of the table on both sides so disposed that no article may be passed from one to the other underneath the table. An officer of the jail will always be present to supervise the interview.

2. For this purpose Government sanctioned an expenditure of Rs 6 which may be required to render the office tables of the Mymensingh and Pabna District Jails suitable for the purpose. The charge will be met from the head 'Extraordinary Charges' under the District Jails in the Jails and Convict settlements budget for the current financial year.

3 The Accountant - General, Bengal, has been informed.

Signed A.E. Porter,
Addl. Secy. to the Govt. of Bengal
No. 3846/2 HJ

Copy forwarded to the Deputy Inspector General of Police, Intelligence Branch, Criminal Investigation Department, Bengal, for information.

Signed G.D. Singh Roy,
Asstt. Secy. to the Govt. of Bengal

Calcutta
The 15th Nov. 1941.

VIII

Food Situation

The significance of the Bengal Famine in the political history of this period has already been discussed in the main introduction. Many documents on that have been placed in other chapters on account of their thematic relevance. In this chapter the documents relate mainly to the course of the famine, the relative efficacy of various types of relief measures whether under government initiative or private initiative, and the role played by leftwing pressure groups. The strength and weaknesses of the procurement methods of the government (through private agents) are revealed in Docs 2, 8, 17, 20, 21, 44, 49, 76, 77, 84, 85, 86, 87, 94, 104–9. Although normally we have not included any extracts from memoirs in this collection of documents, we have made an exception in the case of Doc. 110, because of its human interest. It is connected with Docs 54 and 63, which are contemporary accounts of how women's voluntary organisations rescued orphans in this period. Doc. 110 tells us what happened to these waifs subsequently; the first story shows that these voluntary organisations were acquiring a legitimacy, so much so that the mighty British army had to turn to it to help in looking after an orphan it had rescued. The attitude of the non-leftwing political parties opposed to the Muslim League and that of the Muslim League itself on the question of famine relief is to be found in Docs 15, 91, 92.

There are frequent references to the Basic plan. The 'Basic Plan' is described in Report of the Famine Commission – Chapter VII paragraph 9–25; in November 1942, it involved the creation of a centralized purchasing agency under the Government of India, which would procure wheat, rice and other grains from the provinces and allocate them to the deficit provinces and the Defence Services also see p. 2012 below. Very soon inter-provincial differences over the quantum of surplus available and the methods of procurement and distribution came to the surface.

Other Documents Relevant for this Chapter:

1. Doc. 90 in Chapter II
2. Doc. 138 in Chapter II
3. Doc. 54 in Chapter V
4. Doc. 88 in Chapter V
5. Doc. 63 in Chapter IX
6. Doc. 68 in Chapter XII
7. Doc. 14 in Chapter XV
8. Doc. 17 in Chapter XVIII
9. Doc. 25 in Chapter XVIII



1 Regarding Boat Denial Policy (May 1942-June 1943)

Extracts from Famine Inquiry Commission, Report on Bengal
(Compiled B.F. Nov. 1944-April 1945) – (henceforth B.F. Report (1944-5), p. 27)

The Bengal Government have informed us that it was not a practical proposition to maintain in repair the thousands of boats brought to the reception stations. We are, however not convinced that it was not possible to make better arrangements. In the area to which the 'denial' policy was applied, boats form the chief means of communication, and if the boats taken to the reception stations in 1942 had been maintained in a serviceable condition they would have been available for the movement of foodgrains from the denial area during the difficult times of 1943. Again, the fishermen who had been deprived of their boats suffered severely during the famine. If it had been possible to provide them with boats from the reception stations they would have been less affected by the famine and the number of deaths amongst them would have been smaller.

Considerable areas of land were requisitioned for military purposes during 1942, and 1943. We have not complete particulars of the number of persons affected but from the information available, it appears that more than 30,000 families were required to evacuate their homes and land. Compensation was of course paid but there is little doubt that the members of many of these families became famine victims in 1943. . . .

2. Procurement operations – Agency system – January 1943

Extracts from B.F. Report (1944-5), pp. 37-8, 85-6

. . . 9. Having been compelled to requisition stocks in Calcutta, the Bengal Government came to the conclusion that urgent steps would have to be taken to maintain supplies; and they therefore processed to undertake procurement operations on a more extensive scale than had been contemplated in December. The second scheme came into operation on the 9th January, and the monthly requirements were assessed at 3 lakh maunds of rice (11,021 tons) and 4.5 lakh maunds of paddy (16,532). Purchase of this scale, the Bengal Government thought, could not be made by District Offices. They therefore selected seven agents from the trade and allotted to them areas in which to make their purchases. The maximum prices at which purchases were to be made were prescribed and District Officers were directed to warn all dealers in the buying areas that their licences would be cancelled and their stocks requisitioned if they bought above the Government buying rates. This direction, it may be incidentally noted, was inconsistent with the policy already adopted, namely that a legally prescribed maximum was not to be enforced on the transactions of private trade. A dealer who could not buy above the maximum rates fixed for Government purchases, except at the risk of the cancellation of his licence and the requisitioning of his stocks, was just as effectively subject

to price control as if he had been liable to prosecution for a breach of statutory order fixing maximum prices. But this inconsistency was unavoidable. As a letter sent out to District Officers on the 9th January said, the agents appointed by Government were unlikely to obtain the quantities of grain which Government required, unless competitive buying was prevented as far as possible. It was soon found that the warning did not suffice to protect the agents against competitive buying. Embargoes were, therefore, placed round the buying areas, prohibiting export except under permit. Similar embargoes were also placed round the non-buying areas in order to protect these areas against speculative buying. All these measures proved of no avail. The agents were not successful in purchasing the quantities required and the system was abandoned on the 17th February. The quantity purchased between the 10th January and the 17th February was only about 2,200 tons.

10. Early in January the Bengal Government appointed a Foodgrains Purchasing Officer. His functions generally were to supervise and control the activities of the buying agents and regulate the issue of export permits from districts from which exports were restricted. On the abandonment of the system of buying through trade agents, the procurement system consisted solely of the Foodgrains Purchasing Officer taking offers direct from the trade. The embargoes round the buying areas were maintained so as to enable the Purchasing Officer to combat competitive buying by control over exports from these areas. The non-buying areas also continued to be protected by locally administered embargoes on exports. The pace of purchases by the Foodgrains Purchasing Officer was, however, too slow. He bought only about 3,000 tons between the 18th February and 11th March. . . .

The Situation in January 1943

29. In Section B of Chapter VI was described the purchasing schemes undertaken by the Bengal Government towards the end of December 1942 and in January–February 1943. The object of the first scheme was to secure from the districts in the Rajshahi Division a limited quantity of rice and paddy (7,400 tons) to be used for the purchase of moderating prices in the Calcutta market. This objective, it will be noticed, bore no relation to the situation in Bengal as we have described it. On the 9th January, this scheme was replaced by a more extensive one. If the second scheme had been a success, the supplies obtained would have been almost sufficient to feed Calcutta, and imports into that city on private account would have been practically unnecessary. The scheme failed, primarily because purchases could not be made on a voluntary basis within the price limit fixed by Government. It was abandoned on the 17th February. The quantity procured under the second and the more ambitious scheme was smaller than that under the first, in spite of the fact that purchases were made in a wider area and for a longer period. Whereas under the earlier scheme, purchases were made by District Officers, agents from the trade were employed for this purpose under the later scheme. Had this changes anything to do with the result?

30. This brings us to an important question, namely, the type of organisation which is most suitable for undertaking procurement on behalf of Government. At first sight it might appear that a commercial firm with experience in the buying and selling of foodgrains would be a more suitable agency than a purchasing organisation manned by officials. This, however, has not been the experience of the large majority of the provinces. Madras, Bombay, Orissa, Bihar, United Provinces, the Central Provinces, and the Punjab have all preferred an official agency, and even more significant is the fact that when a change has been made it has been the substitution of an official for a trade agency. The result of this experience, in our opinion,

shows conclusively that in the conditions prevailing in India the procurement of foodgrains on behalf of Government should be carried out by responsible officers in the public service and not by firms chosen from the trade. We shall refer to this matter again in a later chapter, but it is convenient at this stage to indicate the reasons for our view.

31. To begin with, the establishment of a non-official agency raises a problem of selection. The selection of the few gives rise to jealousies and friction which may often lead to difficulties for the agents actually chosen, and this in its turn hinders the cooperation between Government and the trade which is so important for the success of control measures. Again, selection may be influenced by political considerations, and there is the danger that political animosities may lead to allegations against the firms selected. Further, the employment of agents chosen from the trade has been found to impair the confidence of the public generally in the intentions of Government and their ability to carry them out. The public does not readily believe that private firms can be imbued with a spirit of public service; it tends rather to assume that their objective in the circumstances is gain at the public expense. Thus it was alleged at the time, and has been repeated before us, that some of the agents chosen by the Bengal Government under the 'denial' scheme, took unfair advantage of their position as agents of Government to make purchases on their own account. It has also been said that some of those employed in January and February 1943 made large private purchase and large profits on such purchases after Government decided on decontrol. In fairness to those agents we should state that these allegations were not substantiated by evidence and that the witnesses who appeared before us, did not claim that they possessed such evidence. Nevertheless, the fact remains that such accusations were made, were believed, and did harm in undermining public confidence in the measures undertaken by Government.

32. Another reason why an 'official' procurement agency is preferable to a 'trade' agency is that there is a fundamental difference between normal trading and the procurement of supplies on behalf of Government. Normal trading rests entirely on voluntary contracts, there is no obligation on the seller to sell. A procurement organization established by Government must, however, in the last resort depend on coercion. Any attempt by traders for producers to combine and withhold supplies with the object of forcing up prices must be broken by requisitioning. Requisitioning involves the use of legal powers which must be entrusted only to responsible state officials and not to private individuals. It can be undertaken more effectively, and with less risk of misunderstanding as to its necessity in the public interest, by officers who are part of an official purchasing agency than by officers who are normally outside the procurement organization and are only occasionally called in to support the operations of the trade agents.



3. Note of the Intelligence Bureau about a leaflet *Free India* (January 1943)

File No. 3/19/43 – Home Poll (I)

[NAI]

Intelligence Bureau

1. Printed, English leaflet 'Free India' Bengal Congress Bulletin Vol. 11, No. 15 dated 23-12-42, published by the B.P.C.C. Council of Action. An article headed 'Modi-Maxwell-Mudaliar – Jam Racket and the people starve' contain anti-British propaganda. It states that –

Viceroy, Governors, collectors and controllers of all sorts are here to make money. But in the process they inject such corruption, from top to bottom, right and left and across into the administration and economy of the country that these stink. 'There is famine: why are our people the worker, the peasant, the city-poor, starving or semi-naked or living in horrid conditions? Because the British Administration is so corrupt that there is no equal to it'. Another article headed 'Students of Bengal' among other things, incites them to defy the usurper authority of Britain, and adds that every day must be a day of defiance. Among the news the leaflet says under the heading 'Japanese bomb Calcutta' that on 21-2-42, Japanese planes bombed Calcutta; bombs were dropped with amazing accuracy on oil tanks in Budge which were, however, empty. The Dum Dum aerodrome was also secretly attacked and damaged. In Khidderpore dock area, jetties Nos 25, 18, 10 and 4 were severely damaged. Albion jute mill and Lothian jute mill were heavily bombed, the centre weaving department was destroyed. Metiaburuz was also bombed. The British official list puts down casualty in Metiaburuz at only 13. The planes circled round the city for over half an hour.

Typed English leaflet 'War of independence, bulletin, No. 28' circulated by the Assam office of Japan-German Independence Association of India – In short, the leaflet says. 'It is only the British rule that is responsible for all the troubles, anxieties and sufferings of the Indians and all those evils will end with the end of the British rule in India. To attain this object, we requested our countrymen to wage war against the Britishers and their Allies in all respects in India and elsewhere. The Indians should carry on guerilla warfare everywhere in India so that the Government may be paralyzed and the Britishers get no help from here. Bose warns specially the inhabitants of Bengal and Assam to be more cautious. The first drive of the Free Indian Army backed by Japan will be directed through these two provinces. They are warned to keep themselves off from all the military centres and aerodromes of the Britishers. The British propagandists are spreading right and left that the aim of Japan is to occupy India but it is as false as possible. Britishers are the enemies of Japan and she wants to see them dethroned from their lucrative zamindari. Japan quite friendly with India and wants to see India free from British domination'. The leaflet urges the Indian contractors not to become British mercenaries and thus cause harm to their own countrymen whom the contractors are dragging to the verge of Starvation. It calls upon its members to be prepared in all respects to follow suit with the Free Indian Army in their operations in India and thus help to set India free. It informs the countrymen that Japanese air-raids are due only to the lingering Britishers and their Allies in India.

4: Extracts from Fortnightly Report of Baroda and Gujarat States for the fortnight ending January 1943

Crown Representative Records (Baroda and Gujarat State Agency)

[NAI - Acc. No. 361]

Acute shortage of foodgrain of all kinds is being experienced in Baroda. Cheap grain shops have been opened by the Baroda State for the benefit of the State Servants. Reports say however that the Baroda Government cannot supply them with sufficient grain to keep open for more than a few days at a time.

5: Article in *Daily Worker* (London) dt 29.1.43

Daily Worker

[NAI - M.F. Acc. No. 2430]

Portrait of a Hungry Man in India by Mulk Raj Anand*

Tinkori was a tenant on the estate of the big landlord Sir Ganga Singh, in Partapgarh district in the United Provinces. Northern India.

Tinkori's father and his father's father had been virtual serfs on the three acres they tilled on the estate, but the present landlord's ancestors tempered their stern demands with a show of paternal regard for the tenants.

When Sir Ganga Singh took charge, however, he began to re-allot the land to new tenants who were willing to pay him higher rents or bribes. The landlord had been complaining that he was being ruined by the new laws passed by the Congress Government recognising the peasant's right to a seven year tenure or occupancy of the land. So he had been taking it out on those tenants whom he suspected of Congress sympathies.

Tinkori was known to have gone to a peasant gathering with some other villagers who had been evicted because they complained of a recent re-allotment by which the landlord put them on stony and sandy land. Therefore, Tinkori was in for it.

The usual practice on the estate was for the landlord to buy all the grain the tenants had to spare after meeting other obligations, at his own price. These prices had been falling steeply for years, but as the landlord did not allow any tenant to sell grain in the market, town, or charged them a fee for this privilege if he did allow them, Tinkori had been accepting the price paid by the estate.

As the money he earned was not enough to buy seed, he had been in arrears of rent to the landlord. What's more he had to borrow money from the office when his only son died of typhoid two years ago.

Since he was in debt to the estate (and almost every tenant is indebted to the estate), he had not been allowed, to sell his grain at all. The landlord had been appropriating what Tinkori produced, while remitting what he chose of the interest on the debt. . . .

One day soon after Tinkori came back from the peasant meeting, he was called to the office and asked to explain his conduct. Tinkori's heart had been fired with the words of the peasant leaders. He protested; without further ado, he was evicted and his land was given to a favourite of the accountant. So Tinkori had nothing for it but to quit.

Under cover of dark he put his bundle of household goods on his head and, with his wife Toti and his daughter Chandi walked out of the village along the main road towards the mill-town of Cawnpore where other evicted tenants from his village were said to have gone.

After a long and melancholy journey the family crossed the foot bridge on the Ganges and entered the outskirts of the town, where large numbers of straw huts and clay caves stood like rubbish heaps of piles of manure.

Tinkori and his family settled down on a small clearing by a ditch among the heaps of humanity who had preceded them there from the four corners of the land. They washed in a ditch and supped on the stale bread which Toti had brought for the journey. Tinkori began to make tentative inquiries among the colleagues about the possibilities of work in Cawnpore, while his wife and daughter lay down to sleep.

The coolies were suspicious of the newcomer at first. Later, however, Tinkori met a man an ex-coolie, who given up honest work for the more lucrative profession of go-between, the agent of the foreman. The tout revealed that there were some vacancies in the Horseman textile mills, but that there was no change of a job for Tinkori unless he was willing to pay a commission to the foreman.

Other agents had brought contingents of unemployed men, however, and it took some time before the foreman, an Englishman, could interview Tinkori. But when at last Tinkori came face to face with the Sahib, no time was lost over bargaining or inquiries. One pound two and six per month was all that the foreman could offer to Tinkori and his wife, ten shillings to Chandi. And he demanded an immediate yes or no by pointing to the other applicants around.

Tinkori had nothing for it but to take the job, so desperately did he want some stability in the strange surroundings in which he found himself after having been pushed by hard necessity and the city.

Whereupon the foreman Sahib was generosity itself, he offered to advance him a loan of one third of the month's pay at ten per cent. And just to help Tinkori and family, lest they should feel upset or lonely, has offered to set them to work that very morning. . . .

6: News item in *Daily Worker* (London) dt 1.2.1943

Daily Worker

[NAI - M.F. Acc. No. 2430]

Negotiate with India, End Famine

Solidarity with the people of India was expressed yesterday by a great meeting that packed the London Coliseum. A resolution was passed unanimously calling on the British Government to reopen negotiations with the leaders of Indian political parties.

They demanded that the Indian Government should be instructed to take immediate steps

to release anti-Fascist political prisoners, and to end the famine by action based on the initiative and co-operation of the Indian people.

The resolution also called on the Government to recognise the right of India to Independence, and to establish a provisional National Government based on national unity.

Worst in Fifty Years

Krishna Menon, * Secretary of the India League told the meeting that the present famine is the worst in 50 years, and has disclosed the bankruptcy of the present administration in India.

Profiteering is going on and a law has been passed to shoot looters, he declared. 'The looters are the people who are hungry, not the people who keep the food and who ought to be shot.

Affirming the will of India to take part in the war against Fascism, he declared. 'A settlement with India means forging greater unity against the common enemy'.

Fight for Liberty

Professor J.B.S. Haldane* declared that a free India would mean 350,000,000 allies in the fight with Japan. But if India were in bonds, he said, tens of thousands of British lads would perish because we were not mobilizing all the potential forces against the aggressor.

He called on the audience to fight for the liberty of India, which is also our liberty.

One explanation for the policies pursued by the British Government in India and North Africa was that 'Amery and other imperialists prefer Darlan and what he stood for to Nehru and what he stands for' he suggested.

Chairman was the Earl of Huntingdon, and speakers included Mrs M. Corbett - Asbby, Mr S.O. Davies, M.P. and Mrs C.S. Stanley.

A richly varied musical programme included the Unity Symphony Orchestra conducted by Rudolph Dunbar, negro spirituals by Robert Adams, and Indian musicians and singers. There were readings by Jeann Forbers-Robertson, Dame Sybil Thorndike and Walter Hudd.

7 Sahajanad Saraswati, General Secretary to the Prov. Secy. - Govts' Control Policy of the Kisans, Reportage No. 3, 1942 (extracts)

Indulal Yagnik Papers - File No. 22

[NMML - M.F. Acc. No. 2430-3]

Government Control and Necessities of Life

As our Bombay resolution on 'food problem' very rightly says, the price control machinery set up by the Government had miserably failed. With the result that the foodgrains in particular for poor have as if, disappeared, got almost beyond the poor's reach and getting daily dearer. The life of wage earners has become a veritable burden. They cannot feed their dependents, and the employers are in no mood to raise their wages in the proportion the prices have gone up. The cloth of the poor and common people is unobtainable and the talk of the standard cloth raised by the government and capitalists has resulted only in raising more the price of

available cloth very rapidly. Nobody knows if that standard cloth will be any day available. Kerosene oil, salt, sugar and paper problems of adequate supplies still baffle solution on the part of the authorities. Wheat, flour and Dal are not seen in many places. Inter-province and still more, inter-district control of food grains has afforded simply the police a golden chance to earn handsome amounts, especially from bullock cart-wallahs. . . .

Gur and Cane Price

After the scarcity of sugar common people every where began to use Gur, though that too was and is selling dear. The Government fixed its price too, perhaps to make it cheaper. But to no avail. When the cane crushing by sugar factories in U.P. and Bihar began they found to their dismay that cane growers were in no mood to supply cane to them at the rate of eight annas per maund fixed by the Government as the Gur preparation fetched them double that price. Sugar magnates got panicky and approached the Government to ban Gur export, with a view to bring the gur prices down. They also agreed to fix cane-price at ten annas a maund. When even this price raising did not succeed in inducing the growers to bring their cane to mills in sufficient quantities, the Commissioner of Meerut Division of U.P., banned first Gur export from that division, as that is the western belt of sugar factories in U.P.; though I had sent a memorandum to U.P. and the Bihar Governments on the subject, giving reasons for their non-interference in the matter. Bihar Government, let me tell frankly, stayed its hands no doubt. But the U.P. Government turned a deaf ear and banned Gur export in ordinary course, not only from the Meerut Division, but from the whole of that Province! And what are the results? Gur was selling there previously Rs 8 to 12 per maund accordingly to its quality. Now the same is selling at about Rs 6 or so a maund! Thus the Kisans have been ruined and robbed of their due! And who has benefited from it? Certainly not the Gur consumers of other provinces! There Gur is yet selling at the same high prices of Rs 15 or 16 a maund. Nay, it is getting dearer. Of course the profiteers have hoarded a lot of Gur at very cheap prices, black market is already prevailing and they will smuggle it out to other places. anyhow.

The matter did not end here. It was reported that the India Government once more tried to prevail upon the Bihar Government too to ban Gur export just like the U.P. Government. I again approached the Bihar Government with another memorandum or rather a D.O. whose copy together with a covering letter was sent to the U.P. Govt. also. I am glad to say that the Bihar Government have turned down again that proposal to ban Gur export and it is in the circumstances certainly to their credit. Can't the U.P. Govt. too do likewise? I think, there is something wanting somewhere there in this connection and it is for our U.P. comrades to find it out and remove that gap.

8. Food Drive — 11.3.43

Extracts from B.F. Report (1944-5), pp. 38-9, 55, 90

11. The failure of successive schemes of procurement was accompanied by a steady rise in the price of rice, diminution, week by week, in visible stocks, and signs of increasing panic

in Calcutta. On the 4th January 1943, the price of coarse rice had dropped to Rs 11/4/0 a maund following sales by shopkeepers who left the city after the air-raids. On the 20th January, the price had moved up to Rs 12/8, on the 33rd February to Rs 13/2, on the 17th February to Rs 13/12 and it reached Rs 15 per maund on the 3rd March.

12. We have made a detailed study of the relevant trade statistics and the information supplied by the Government of Bengal about the movement of supplies throughout 1943 into Bengal from outside the province as well as in and out of Calcutta. We append to this report a note¹ showing the results of our analysis. These show that the net receipts into Calcutta during January and February 1943 were approximately 7,000 tons in each of these two months. This was only a fraction of the normal monthly requirements. Wheat also was in short supply and this added to the demand of rice. There is no doubt that the stocks in Calcutta at the beginning of the year were much smaller than in the previous years and these were being consumed far more rapidly than they were being replaced. By the beginning of March, stocks were down to such a low level that it looked as if the city must starve within a fortnight, unless large supplies arrived quickly. Thus by early March the crisis had become acute in Calcutta.

13. As we have explained, it is imperative at the beginning of 1943 that the flow of supplies to the consumer should be maintained and that prices should not be allowed to rise still further. Up to this point the Bengal Government were attempting to achieve both these objects. But they had failed. A breakdown in the supplies for Calcutta appear imminent. A vital decision on policy had to be reached and reached quickly. Was it practicable to hold price and to maintain the flow of supplies? If it were not, — and the state of Calcutta appeared to show that it was not — what was to be done? Two choices were open. One was to intensify the policy of controlled procurement, hold prices rigidly, and pass over from reliance on voluntary sales to coercion, to whatever extent was necessary, to secure supplies at a price determined by Government. This meant seeking out stocks wherever they were held whether by traders or producers, and requisitioning those stocks not sold voluntarily. The other course was to allow prices to rise and to secure stocks by purchase in the market and by imports from other provinces, in the hope that it would be possible by the use of such stocks to moderate price as had been done by the use of the 'denial' stocks in the previous year. The Bengal Government carefully considered the pros and cons of both these courses. Risks were inherent in both. The former involved widespread and highly organised coercion. Were the administrative resources of the Government equal to the task? If coercion failed, it would drive stocks even deeper underground, lead to disorder in the districts, and a complete break-down in Calcutta. On the other hand, the latter, viz., de-control, particularly if it were not possible to acquire stocks sufficient to enable a moderating effect to be produced on prices, might result in prices rising to a level at which widespread famine would be inevitable. The probable consequences of both courses were recognised. Before a conclusion was reached, Commissioners and District Officers were consulted on the issue of coercion. With one exception, they were of opinion that measures which would probably involve the use of force were not practicable and would not produce sufficient supplies.

14. The Government of Bengal then made their choice. The decision was taken to abrogate any vestige of price control, and it was announced publicly on the 11th March in the following terms:

'No Price Control in Wholesale Rice and Paddy Markets'

'To clear up misapprehensions which are still impeding the flow of paddy and rice into the markets, the Bengal Government declare categorically that there is and will be no statutory

maximum price for wholesale transactions in paddy and rice. Both cultivators and traders are free to bring their grain to the market without fear of having it taken from them at a price to which they do not agree. No trader who had declared his stock under the Foodgrains Control Order will be compelled to part with it below the prevailing market price

'(ii) The Bengal Government, in full accord with the Government of India, adhere to the policy of buying as much rice and paddy as possible by free market operations in order to secure the best use of the resources of the province and their most equitable distribution.

'(iii) The clear abrogation of any vestige of price control in the primary wholesale market does not imply unrestricted profiteering. Government's own operations as buyer and seller coupled with the removal of the black market are in their opinion most likely to be successful in moderating prices at a reasonable level; but to prevent buying at reckless prices by wealthy areas the embargoes prohibiting the movement of paddy and rice from one area in the province to another will remain in force. The Government itself takes the responsibility for the movement of paddy or rice to deficit areas'.

15. Earlier in the year, the Central Government made a similar decision as regards the control of wheat prices. Arrangements had been made for the shipment of substantial quantities of wheat to India and at the end of January 1943, the statutory maximum prices for wheat which had been imposed in December 1941, were withdrawn. At this time the Government of India were of the opinion that prices should not be regulated by statutory control but by other methods. The decision reached by the Government of Bengal was, therefore, in accord with the policy of the Government of India at the time, and was indeed taken with their approval.

16. Simultaneously with the announcement of decontrol, District officers were directed to explain the policy to grain dealers in their districts and inform them that Government's object was to buy considerable quantities of rice and paddy. District Officers were also told to purchase without limit of price any rice and paddy offered to them in the first three days, up to a limit of 20,000 maunds; and after that, to report all offers to the Foodgrains purchasing officer for his orders. They were further directed to explain the measures which Government were taking to the public at large, through influential persons throughout the districts. . . .

Supply and Distribution in Bengal

A - The 'Food Drive'

1. We have seen that on the 11th March, the Government of Bengal, having decided on decontrol, made a public announcement declaring 'that there is and will be no statutory maximum price for wholesale transaction in paddy and rice. Both cultivators and traders are free to bring their grain to the market without fear of having it taken from them at a price to which they do not agree. No trader who has declared his stock under the Foodgrains Control Order will be compelled to part with it below the prevailing market price'. It is clear that if the cultivator or the trader were free to bring his grain to the markets, he was also free to withhold it from the market; in other words, hoarding was permissible. If grain was withheld from the market to any appreciable extent, prices were bound to go up, and it would be legitimate for the cultivator or the trader who had withheld his stocks to get the benefit of the higher price; in other words, he could profit. The Government of Bengal feared that this might happen, but they did not intend that it should, and hence they announced that 'the clear abrogation of any vestige of price control in the primary wholesale market does not imply

unrestricted profiteering. Government's own operations as buyer and seller coupled with the removal of the blackmarket are, in their opinion, most likely to be successful in moderating prices at a reasonable level; but to prevent buying at reckless prices by wealthy areas, the embargoes prohibiting the movement of paddy and rice from one area in the province to another will remain in force'. Again, early in April, District Officers were instructed to impress upon stockholders, cultivators, and the public generally that peace-time stocks cannot be maintained under the stress of war, and that 'the maintaining of what might ordinarily be regarded as a normal peace-time stock will not necessarily absolve the individual from the offence of hoarding'. Most of the embargoes referred to in the announcement of the 11th March were removed within a few weeks and experience proved that the operations of Government as buyer and seller were on too limited a scale to reduce prices to a reasonable level. The first major attempt to 'break' the Calcutta market by imports from other provinces had also failed. Prices had risen: the price of rice was higher than what the poorer sections of the population could afford to pay and they were beginning to starve.

2. This was the situation when at the end of April and early in May, the representatives of the Government of India and the Government of India and the Government of Bengal conferred in Calcutta and the decision was taken to introduce free trade in the Eastern Region. Another decision taken during these consultations was to launch a propaganda drive for the purpose of convincing the people that the supply position did not justify the high prices prevailing. It was hoped that this propaganda, conceding with the arrival of imports, would induce a freer flow of stocks into the market and bring down prices. These objects were not achieved and the propaganda failed.

3. In the first week of June, 1943 the Government of Bengal launched a province-wide 'food drive' the objects of which were defined as follows:

To ascertain the actual statistical position, to locate hoards, to stimulate the flow of grain from agriculturists to the markets, and to organise distribution of local surpluses as loans or by sales to those who were in need of foodgrains . . .

We have described the dilemma with which the Government of Bengal were faced early in March, 1943. They had to decide between two courses of action, both of which involved serious risks. Their decision in favour of decontrol was in accordance with the policy of the Government of India and indeed was taken with their approval. We appreciate the care with which the Bengal Government weighed the pros and cons before reaching their decision. But it was, in our opinion a wrong decision.

1. Not printed.

9. Extracts from B.F. Report with dissenting paragraphs of Nanavati and Ramamurti

B.F. Report (1944-5), pp. 60-2, 101-2

There is no reliable information about the quantities of rice and paddy held in stock in Calcutta at the beginning of the year 1943. The Foodgrains Control Order had been brought into force on the 15th December 1942, but it was not efficiently enforced. We know, however,

from the statistics of rail-borne and sea-borne trade that the net imports into the Calcutta Trade Block were 304, 000 tons during 1941, and only 115,000 tons during 1942. The area served by supplies received into the Calcutta Trade Block does not correspond exactly with the area of Greater Calcutta which is now under rationing. It is not, therefore, possible to estimate accurately the annual rice requirements of the area served by the imports into the Calcutta Trade Block, but it may be safely assumed that they are between 200,000 and 250,000 tons. On this assumption the net imports into the Calcutta Trade Block during 1942 were much below actual requirements. The stocks held on the 1st January 1943 must therefore have been considerably smaller than those held on the 1st January 1942.

The following tables shows the net imports into the Calcutta Trade Block from outside Bengal districts and paddy in terms of rice during 1943:

(Thousands of tons)

| Period | Net imports from outside Bengal | Imports from Bengal districts | Export to Bengal districts | Net retention in the Calcutta trade Block |
|-------------|------------------------------------|----------------------------------|-------------------------------|--|
| 1st quarter | 7 | 32 | 7 | 32 |
| 2nd quarter | 51 | 47 | 9 | 89 |
| 3rd quarter | 52 | 22 | 13 | 61 |
| 4th quarter | 86 | 21 | 15 | 92 |
| | 196 | 122 | 44 | 274 |

The figures for the first clearly indicate the severity of the crisis through which Calcutta was passing during the first three months of 1943. Net arrivals during the two months of January and February amounted in all only to about 14,000 tons and those for the whole quarter were equivalent only to about six weeks' supply. During this period stocks were being consumed and not replaced. Hence the pressure on the supply position which led to the decision to decontrol prices of rice early in March. In the second quarter supplies improved considerably. This was due to the assistance given by Orissa, the increase in the flow of supplies from Bengal itself owing to de-control, and the introduction of free trade in the Eastern Region. During the third quarter, supplies decreased in comparison with the previous quarter: this was due to smaller supplies from the districts of Bengal. The increase in the last quarter is accounted for by the larger supplies reaching Bengal under the Basic Plan.

The following figures show the arrivals on Government account of rice in Calcutta and the manner in which the provincial Government disposed of these supplies.

(Thousands of tons)

| | | | | |
|--|----|----|----|----|
| Arrival on Government Account | 23 | 50 | 36 | 87 |
| Despatches to the districts | 2 | 15 | 19 | 28 |
| Deliveries to employers' organisations and for essential services | 17 | 36 | 18 | 20 |
| Deliveries to controlled shops and approved markets | 7 | 18 | 14 | 11 |
| Total despatches and deliveries | 26 | 69 | 51 | 59 |

During the first three quarters, the total amount distributed by Government exceeded the total arrivals on Government account. The difference was made up of private stocks which were either requisitioned or purchased. It was only in the fourth quarter that arrivals exceeded the amounts distributed.

18. Paragraph 16 of Appendix V¹ shows the quantities of rice, wheat, wheat-products, and millets despatched to the different districts from Government stocks in Calcutta. In addition to these supplies the districts also received consignments of rice direct from other provinces, and District Officers supplemented their resources by local purchases and requisitioning. It will be recalled that 41,000 tons of rice and paddy were obtained by requisitioning during the 'Food drive'. We calculate that about 60,000 to 70,000 tons of rice were received in the districts direct from other provinces but we do not know what proportion of those quantity was received on Government account. The stocks which passed through the hands of the District Officers were used to meet the requirements of the essential services, and for distribution to the general public. Distribution to the general public was done partly by wholesale and retail dealers who sold at prices fixed by Government, and partly through cheap grain shops, of which a large number was opened for the sale of grain at subsidized rates to the public.

19. From August onwards, large supplies of grain, despatched on Government account from outside the province, began to arrive in Calcutta. During the last quarter of the year, the quantity of rice received was more than twice that received during the preceding quarter, and during the same period 176,000 tons of wheat arrived, a quantity approximately equivalent to total arrivals during the preceding 9 months. In addition, considerable quantities of millets were despatched to Calcutta. The arrivals of these supplies found the Bengal Government completely unprepared as regards the supervisory staff, transport vehicles, and storage accommodation necessary for the reception of the grain and its despatch to places where it was needed. Towards the end of the year, grain was stocked in the open, covered by tarpaulins in the Royal Botanical Gardens owing to lack of more satisfactory arrangements. In some districts there was a similar failure in organisation. A number of witnesses referred to stocks of *aus* paddy which lay for a long time undistributed in Jessore. The Bengal Government have provided us with accounts of the storage of grain in the Royal Botanical Gardens and Jessore, of which resumes will be found in annexure II and III respectively to Appendix V.² Extracts from a report of the Bengal Government regarding storage and distribution generally, are given in Annexure I to Appendix V.³ In a later section of the report, we have ourselves commented critically on storage and transport arrangements during the famine. . . .

. . . Sir Manilal Nanavati* and Mr Ramamurty* do not agree with the above view regarding the distribution of available foodstuffs in the hands of the Bengal Government, during 1943. Their opinion is as follows:

Out of the 206,000 tons that came in the hands of the Bengal Government on Calcutta during 1943, 1412,000 tons were retained in Calcutta while only 65,000 tons were sent to the mofussil.

Prices in many parts of the mofussil were generally higher than in greater Calcutta: more food stuffs sent to rural areas might probably have helped to bring down the prices and would certainly have given relief to the needy. Greater Calcutta was all along well supplied with food stuffs and there was never any serious shortage: the priorities and the Industries carried ample stocks to last them for weeks. Therefore, if more foodstuffs had been sent to the rural as they would have been materially helped without interference with essential needs in Calcutta.

Sir Manilal considers that this question of Calcutta versus the rural areas has certain other important aspects which should be stressed. He says:

In my opinion, a clear conflict of interest arose early in 1943 between Calcutta, where the maintenance of supplies, especially for the priority services and War Industries, was a primary problem, and the rural areas where the lives of the poorer classes depended on the availability of supplies at reasonable prices. Inflation was raising prices, and wages in the rural areas were not responding. The denial policy in rice, boats, and cycles enforced by the Government of India, the evacuation of villages for military reasons (nearly 35,000 homesteads were affected), the floods, and the cyclone, and the failure of crops had already weakened the economy of rural Bengal. By the end of December 1942 distress had already appeared and by March 1943 widespread famine was anticipated by district officials. Consciously or unconsciously, the Bengal Government allowed the needs of the rural areas to be outweighed by those of Calcutta and particularly its big business interests. If the interests of the rural population had been kept more prominently in mind, the mistaken policies of 'decontrol' and 'unrestricted free trade, the relaxation of the Foodgrains Control Order and the other policies which encouraged profiteering and hoarding would not have been adopted. The same policy was adopted in the distribution of available stocks when every ounce was urgently needed to feed the starving, where relief works had to be slowed down at critical moments for lack of food and funds. From the moment the signs of distress appeared, the Government of Bengal should have made it clear to the Government of India and well as to the employers organisations who had adequate resources and who had great influence, that they could not discharge their primary duty to the population in Bengal as a whole unless they maintained strict control over prices and that, in the distribution of supplies under their control, Calcutta would not have priority over other deficit areas in the province. At the same time, they should have clearly brought to the notice of the Government of India the seriousness of the situation as it was developing and demanded their immediate attention in the strongest terms as was done by the Bombay Government. If this course had been followed, the need of Bengal for external assistance would have been recognised earlier: supplies would have been procured from outside more expeditiously: earlier attention would have been given to the state of the people in the rural area and much of the misery would have been avoided. On the contrary when distress appeared, there was a tendency both on the part of the Government of India and of Bengal to minimize the prevalence of famine, with the result that the efforts of the Government of India to secure external supplies were prejudiced even as late as August 1943 by the mistrust and suspicion occasioned by complaints about profiteering which prevailed in Bengal. This atmosphere of mistrust influenced the situation throughout the famine. In the end not a single man died of starvation from the population of Greater Calcutta, while millions in rural areas starved and suffered.

1, 2 and 3. Not printed.



9A. Extracts from Afzal Hussains' Minute regarding Calcutta on the Bengal market

B.F. Report (1944-5), pp. 189-90

Calcutta on the Bengal Market

16. The shortage considered in the last section was aggravated by the fact that, throughout the famine of 1943, Calcutta was on the Bengal market.

On 'looking back' the feeling grows strong that the most obvious and correct step, which was taken in 1944, should have been taken in 1943. With the first signs of distress, Calcutta should have been immediately *taken off* the Bengal market. This was obvious. For wheat Calcutta had been off the Bengal market always. The average imports of Burma rice were roughly equal to the rice requirements of Calcutta. Therefore, for many years Calcutta had been virtually off the Bengal market both for rice and wheat. During the year of a short crop, after cyclone and flood, with the enemy knocking at the gates, the population increasing through an influx of refugees, increased concentration of war industries, and a huge army depleting the market of milk fish, egg, poultry, vegetables, and fruit, Calcutta was on the Bengal market, armed with a huge purchasing power. The inevitable result was famine in Bengal. This should have been easily foreseen. This is a lesson for the future.

10. Review of an article in *Janayuddha* dt 17.2.1943 (Report dt 15.3.1943) .

Govt. of Bengal Office of the D.C.P. (Sp. Br.) File No. SK562/43
[Bengal State Archives]

1. Under the editorial column with the heading 'Demand for the release of Gandhiji' it urged for the unity of the Muslim League and the Congress so that they could unitedly demand for the release of Gandhiji and other Congress leaders who were detained in jail. This was the opportune moment for unity as the people of the whole world especially that of Great Britain and America were siding with India. It deplored the destructive policy which was nothing but the activities of Fascist 'Dalals' and said that this was not the way to liberate the country.

2. Comrade Dhiren Majumdar of Kalighat Section of the Tramways Company warned the workers against the correctness of the weight of the food stuff which were being supplied to them by the Company. It was found in several cases that they were being supplied with less quantity of food stuff than actually it should be. They should stop this sort of theft from the poor workers.

3. Other articles contain usual communist policies and views point. There is nothing objectionable.



11: Governor of Bengal to the Viceroy 18 March 1943

Linlithgow Collection
[NAI - Acc. No. 336]

From
H.E. Sir John Herbert, G.C.I.E., Governor of Bengal.

*Govt. House, Calcutta,
March 18th, 1943.*

Dear Linlithgow,

[Earlier paragraphs deal with Gandhi's fast — Ed.]

4. Food — I must again thank you for the personal interest and great helpfulness which you have displayed in our food problems. As you know, Somerset Butler returned with me to Calcutta and at once held his conference of representatives of the province of North East India, which I understand went very well. It is a pity that there have been misunderstandings between Bengal and Bihar over rice and I have to admit that we have not been altogether tactful, but I must say that I found William, the Bihar Director of Supplies, with whom I had a talk, very understanding inclined to be helpful. Incidentally, I must acknowledge the very great cooperation and sensible outlook of Somerset Butler, whose qualities rate very high.

5. When I met him and Wood in Delhi I was under the impression that we had removed all price control of rice outside Calcutta. This indeed was the intention, but the Department had inadvertently reintroduced the equivalent of control by warning all who sold above the ceiling price for Government purchases (which was unfortunately public property) that they ran the risk of having their licence cancelled and their stocks requisitioned at the Government price. The result was that no rice came to the mofussil markets, and a definite publicized policy of decontrol became essential. My Ministers were not easy to persuade and I have to thank Somerset Butler for putting the case for decontrol to them very clearly and convincingly — his citing of the example of wheat in the Punjab and United Provinces helped much to persuade them.

6. Wood had made it clear in Delhi that help from your Government was conditional on absolute secrecy for the present as to their intentions. For this reason, while explaining to my Ministers that the attitude of the Central Government was one of co-operation and accommodation I was very careful not to apprise them of any proposed imports of rice into Bengal. I was therefore surprised and shocked when Huq extricated himself narrowly from a defeat in our Legislative Assembly (92 votes to 78) by promising extensive imports and undertaking to prohibit all exports. Without previous consultation with myself, he also announced the intention to set up an Advisory Committee under N.R. Sarkar.

7. I took the earliest opportunity to warn my Cabinet of a danger of such indiscriminate public pronouncements in respect of a ticklish commodity like rice especially at a time when delicacy was imperative in our dealings with the Central Government which was showing a most helpful attitude. When I tackled Huq personally he blandly explained that he had to

say something to avoid defeat, but he was quite prepared to take back anything which he should not have said! As for the Committee, he said that could be set up at any time, or not at all. I made it clear that in any case the Committee could not take the place of a responsible Minister, and Huq of course fully agreed for what that may be worth.

8. I am now thinking in terms of Banerjee*¹ as Supply Minister, though, in the present acute food situation there are no bidders for this post — and Banerjee¹ seems no keener than the others. If he accepts, I shall be left with a disgruntled Dacca Nawab with a certain following and potentialities of mischief to the Ministry. But he is a poor creature and in his most resentful moments seems to yield either to the crack of Huq's whip or to his saccharine charms. Banerjee is, I think, personally honest and public spirited, but he is a chatterbox and busybody. In fact, scrapping the Nawab will not prove an unmixed blessing. With him as Minister, the officials could at least carry on with secrecy and expedition, as he had neither the wit nor the ability to interfere or even to know what was going on. The weak spot, of course, was explanation in the legislature of policy and action taken. With Banerjee as Minister, there will be a grave risk of leakage of vital secrets and interference, possibly well-meant, with the work of the Department.

9. In fact, I am very worried with the whole position in respect of the supply portfolio and food. As I see it, my best bet is to deal as much as possible directly with Banerjee and eliminate Cabinet and other Ministers as far as is constitutionally possible explaining the reason for this course to him and Cabinet. I cannot help feeling that it is a pity that Section 57 of the Constitution Act² does not apply to a crisis arising from shortage of supply. The Act apparently provides sanction in such a crisis as Section 93 is not available so long as any stable alternative to the Ministry in office remains: And in any case one does not necessarily want to take over the whole field of administration in order to meet the special requirement of food.

10. Ministry — You will have received my telegram of the 11th regarding an expansion of the Cabinet. I interviewed four of the five candidates (I cannot consider Mullick until your Government's reactions to sparing him are ascertained) that afternoon and in the result I am not clear whether they all are really anxious to join the Cabinet. The curious fact is that Huq's approach to these persons is not 'I want you in the Cabinet; let us see whether His Excellency agrees' but 'His Excellency wants you in the Cabinet, I fully concur'. I found that the candidates definitely and gratefully regarded the proposition of them joining the Cabinet as emanating from myself and this led me to ascertain how far Huq had taken them into confidence regarding his intended politics. I have a feeling that, if they knew more they would not be keen to join his Ministry and I must look into this further before committing myself definitely to their appointment. Since the 14th Huq has again been seeking a rapprochement with Jinnah (without success. I am told) and has also received his old proposal to stand down to make room for a Ministry of all the parties; so we are in the usual state of flux. My main concern is to get a Minister at once to deal with food.

11. Huq's indiscretions in the Legislature have not been confined to the subject of food. You will have seen that he openly complained of the lot of a Minister sandwiched between the Governor and officials devoted exclusively to the service of the Governor. He invoked Section 19 of the Constitution Act but I should have thought that the section was equally authority for the view that officials are the servants of the Ministry rather than of the Governor in 'advice' matter. Anyhow Huq — as usual — was full of contrition when he saw me afterwards. He was prepared to make a statement in the Legislature in answer to S.P. Mukherjee's³ statement regarding his resignation and would submit it in draft for previous approval to myself and the European Group!

12. More disconcerting is evidence now coming to hand that Huq is endeavouring to use officials for party purposes in the elections — in substance, the offence which has excluded Faruqi from politics for six years at Huq's own instance — and is actually working against our rice policy to secure profits for dealers who are his proteges and so presumably indirectly for himself. It seems impossible to tolerate this sort of thing indefinitely.

Yours sincerely,

J.A. Herbert

1. This refers to Pramatha Nath Banerjee who was Revenue, Judicial and Legislative Minister in Fazlul Huq's Ministry.
2. Section 57 of the Government of India Act is one of fourteen sections (46-59) dealing with the Provincial Executive. Section 56 (on rules for Police administration) specify how the Governor, in his individual judgement can make rules for administering the police force. Just after that comes Section 57, which goes as follows:
 57 (i) If it appears to the Governor of a Province that the peace or tranquility of the Province is endangered by the operations of any persons committing, or conspiring, preparing or attempting to commit, crimes of violence, which, in the opinion of the Governor, are intended to overthrow the government as by law established, the Governor may, if he thinks that the circumstances of the case require him so to do for the purpose of combating these operations, direct that his functions shall, to such extent as may be specified in the direction, be exercised by him in his discretion' and, until otherwise provided by a subsequent direction of the Governor, those functions shall to that extent be exercised by him accordingly.
 (ii) While any such direction is in force, the Governor may authorize an official to speak in and otherwise take part in the proceedings of the Legislature, and any official so authorized may speak and take part accordingly in the proceedings of the Chamber or chambers of the Legislature, any joint sitting of the chambers . . . but shall not be entitled to vote.
 (iii) The functions of the Governor under this section shall be exercised by him in his discretion.
 (iv) Nothing in this section affects the special responsibility of the Governor for the prevention of any grave menace to the peace or tranquility of the Province or any part thereof. — Ed. [See also Doc. 17]
3. S.P. Mukherjee resigned on 16-11-42. Resignation was accepted 20-12-1942.

12. Sahajanand Saraswati to Provincial Secretaries Reportage No. 1 — 1943-4 (extracts)

Indulal Yagnik Papers, File No. 22
[NMML]

(7) Food Crisis

The food crisis is deepening and the bulk of the rural population who consist of poor peasants, agricultural labourers and tenants have to suffer indescribable privations and misery. Prices of food grains have risen by 200 per cent and more since the war began without substantially benefiting the actual tiller of the soil. Due to the ineffective and anarchic measures of control of Govt. food grains have become scarce in the open market and disappear from it from time to time. This is also true of other essential commodities, such as kerosene, cloth, sugar, matches, Iron etc. The situation is daily worsening.

2. The attempts of Govt. to control prices have miserably failed. The prices soared high since the war broke out and the hoarder and profiteer trading in black market rules the market.

While the provincial Govts are trying to control prices the Govt. of India is buying and permitting others to buy huge stocks of grain at prices far above the control prices.

3. The August situation precipitated by the bureaucratic repression helped to worsen the situation further. Hoarders increased in numbers. Fifth columnists sought to exploit the situation for leading the country to complete social disruption. Any worsening of the food crisis will necessarily land the country in chaos and offer an opportunity to the bureaucracy to crush the remnants of the people's morale.

4. In the rural areas the situation is gloomy. The Kisan does not profit by the speculative rise in prices. He parts with most part of his grain at the harvest time at low prices and buys it back at the high prices of the hoarder. He has to pay fantastic prices for essential commodities such as kerosene, cloth, sugar etc. Natural calamities such as cyclone, famine and floods have in many places worsened the situation still further. Lack of transport facilities is one more that has complicated the food situation.

5. The experience of the food campaign shows that the food crisis can be solved on the strength of people unity and the bureaucracy forced to take measures to scale down prices and procure stocks, and track down the monopolist hoarder. The Kisans must join the food campaign together with the rest of the population. The Kisan Sabha must take initiative in forming people's food committees in villages and tehsils wherever necessary and possible, which should be representative of all section of the people and all patriotic and popular organisations.

6. The main task of the Kisan in the food campaign therefore are:

- a. To ensure fair price to the grower
- b. To stock grain, sold by the Kisan, in public godowns, so that the stocks, though owned by traders, be under the supervision of the food committees and be sold at control prices guaranteeing a fair margin of profit to the trader.
- c. To scale down the prices of all commodities such as cloth, kerosene etc. and make them available to everybody.
- d. To induce Govt. to open cheap grain shops in scarcity areas and recognise people's food committees as bodies which control and supervise supplies, distribution and prices.
- e. To secure necessary transport facilities for importing and exporting food grains and other essential commodities for their regular and adequate supply to the rural population all over the country.
- f. To open peoples cooperative stores extensively in rural areas for purpose and distribution of food stuffs and other essential commodities at fair prices.
- g. To encourage and introduce among Kisans cottage industries such as spinning, weaving, leather work, bamboo and cane work, salt making in coastal areas etc.

7. The All India Kisan Sabha warns Govt. that if it finds itself helpless to control the hoarders of food grains and therefore takes measures to requisition them from cultivating kisans in order to tide over the food crisis, the situation will worsen and result in grave consequences. The Sabha also advises the Kisans to refuse to be bullied into delivering or selling food grains, which they require for their maintenance, to merchants, middlemen, landlords sahukars and Govt. purchasers.



13: Maj. Gen. E. Wood, Addl. Secretary, Government of India to L.G. Pinnell, dt 23 April 1943

Nanavati Papers B. Bros memo —

List of literature sent by Sir Manilal B. Nanavati – Item No. 5

[NAI] Nanavati Papers – File No. 57/1944 [NMML]

Copy of Letter No. D.O. 400/ADDLK. S. (confidential), dated New Delhi, the 23rd April from Major General E. Wood. C.I.E., M.C. the Addl. Secy. to the Govt. of India, Department of Food, New Delhi, to L.G. Pinnell, Esq., C.I.E., I.C.S., Director of Civil Supplies, Bengal, Calcutta.

My dear Pinnell,

I read with a good deal of interest the enclosures to your Letter No. 4507-DCS of the 16th April¹ analysing the views of certain District Officers to the reasons for the present constriction in the supply of rice and paddy in Bengal.

2. I note the steps which have already been taken to deal with the situation. These amount to the decontrol of the primary wholesale market and buying by Government at high prices, to be followed by discriminate buying at gradually diminishing rates.

3. These measures are sound, so far as they go; but I am sure you will agree with me that they do not yet go nearly far enough, and that further measures—among them those which you have noted in your analysis are required, and required urgently. In this connection, I attach a copy of a letter² which I have written to Blair a few days ago and which you may have already seen.

4. The Government of India, for its part, will do everything it can to continue the supplies which it has arranged from outside. But although we can go on doing this for some time longer, you will be the first to realise that it must have a limit. It is, as it were, the application of artificial respiration, in order to enable the patient, as soon as possible, to breathe naturally. You will realise too that these supplies are not conceded by Bengal's neighbours without difficulty since they do not like seeing surpluses of which they do not in some cases even admit the existence disappear into the Bengal vortex and that, in so far as these surpluses exceed what is provided under our Basic Plan for export to Bengal, they will have to be repaid. You know too that we are as anxious as you are to remove local restrictions on normal inter-provincial trade, but the achievement of this in the Eastern Region may perhaps only be practicable when some semblance of normality is restored in Bengal.

5. I should therefore be grateful if you could let me know as soon as possible, what positive steps are being taken by the Bengal Government to follow up your own ideas and ours, for the improvement of the situation.

6. As I read the enclosures to your letter,³ I was left wondering whether the fear of shortage was not perhaps greater among the officials than among the cultivators. If the cultivators are holding large stocks, as the result of an officially preached self-sufficiency campaign, they cannot fear present shortage for themselves; but they are not likely to disgorge those stocks until the official can, with conviction, tell them that self-sufficiency can now safely give way to the idea of a sufficiency for all. It is necessary, therefore, I suggest to preach the gospel of

sufficiency to your District Officers, and for them to pass it on. There are good grounds for it: there is the fact that, in spite of the cyclone and crop disease in some areas and the loss of the Burma rice, last year's Bengal crop was an excellent one, and must have had a substantial carry-over (few people, even among cultivators, eat new crop rice), there is the fact of the Government of India's planned Foodgrains Sufficiency Scheme; and there is the fact that supplies have been arranged and are steadily arriving from Bengal's neighbours. Combined with the last point a word of warning to officials, merchants and cultivators would not be out of place, that when large imports from outside are made necessary because adequate internal stocks are being withheld, the situation will ultimately have to be faced of a *glut*, with an accompanying steep fall of prices for which those who are holding stocks now will only have themselves to blame.

7. I am glad to see that failure to enforce recovery of rent and debts, and holding by jotedars for profit, are given a high place in the acknowledged reasons for the present difficulties. The remedies lie ready to the Bengal Government's hand, and we hope that they will be applied with the greatest vigour. I feel, however, that reasons 7 and 10 among the 'main reasons' listed by above are too low in the list, and that in order to persuade cultivators to bring their stocks out, very serious attention will have to be given by the Bengal Government in the next few weeks to the provision of police protection in *hats* and markets. I am sure that the present fear of looting, if the possession of saleable stocks is revealed, is one of the most powerful reasons operating to keep stocks underground. I also believe that political and subversive propaganda is an active and cogent factor, with the Midnapore cyclone and the denial policy as weapons ready to its hand: and that the Bengal Government must use every possible means of countering this, by attacking and confining on a large scale those who are likely to be its exponents.

8. We all admit that this problem will not be solved until Bengal's hidden stocks are prised loose and begin to flow freely of themselves. Example as well as precept will be required, and cannot the Bengal Government start with its *khas mahals* tenants? Mymensingh, for example, is not only a district of *khas mahals* but of big landlords. The Maharaja or Mymensingh, and Nawab of Murshidabad in respect of his Berhampore? Estates might also have the requisite appliances applied. If all these can immediately be persuaded, as also others in areas well distributed all over Bengal, to bring their stocks, under protection, to protected markets, where they will receive the prevailing high prices for them, their neighbours who should be made to realise that those prices will not stay high for ever, will not be slow to follow suit. One would suppose that the higher landlords could also be persuaded to work to the same end among their tenants. It will undoubtedly also be advisable to mobilize the support of the main dealers in Calcutta through the Trades Associations, and I wonder if you have considered the possibility of Government selling its grain to them for normal trade distribution?

9. I sincerely hope that, when new Ministry is formed, one of their first acts will be the organisation of province-wide mass meetings to preach the gospel on some such lines as I have outlined.

[Copy to: The Hon'ble Mr Justice H.R.L. Braund, Regional (Food) Commissioner, Eastern Region, 2, Mangoe Lane, Calcutta. H.D. Vigor, Esquire, O.B.E., Adviser to the Government of India, Food Department, New Delhi.

14: H.B.L. Braund to Maj. Gen. E. Wood, 27 April 1943

H.B.L. Braund's memo – List of literature – Item No. 5 Nanavati Papers
[NAI] Nanaveti Papers – File No. 57/1944 [NMML]

Appendix I

Secraphone Message

No. 441582

Date 27.4.43.

From WARMP, Calcutta.

To Warboard, New Delhi.

To Wood, Food Department from Braund.

I have now the benefit of two days discussions with Vigor. Following is a summary of present position which I feel it urgent you should be made aware of. A letter follows. Calcutta for subsistence purposes alone requires twenty-five thousand maunds a day this I have succeeded with difficulty hitherto in getting from Orissa and the Eastern States. The Orissa supply on present basis comes to an end early May. The buying arrangements in Eastern states hold no certainty of continued supplies in assured quantities having regard to other commitments. The Bihar attitude is expressed by their Letter No. 3868 P.C., dated 5th April. Even therefore from the point of view of Calcutta maintenance alone the position after the first week in May is uncertain. Meanwhile in Eastern Bengal a supply during May has been arranged which may meet mere subsistence purposes but I am warned by Assam that I can get no more from the Assam Valley for months. Prices in East Bengal now range generally between Rupees twenty-three and twenty-seven with particular places as high as thirty-five. These are ugly facts which lead me to the conclusion which I feel it my duty to express that the reaction of provinces and States to the Basic Plan may be too unwilling and too late to achieve its real purpose or even to maintain Bengal. I feel that you should consider whether you should not apply in aid of your Basic Plan such immediate constitutional steps as may ensure, repeat ensure, its fulfillment by provinces in time and to the degree necessary or in the alternative to some other such measure as is urged by Vigor below. This message is based on my feeling which I ask you to believe is not in criticism of the Basic Plan but is because of doubt whether its machinery will be sufficiently speedy and sufficiently radical to carry out either your immediate or ultimate purpose in this Eastern Part of India where conditions are critical. I am leaving Vigor to finish this message. Vigor adds first I have no faith in light of experience to date Central directions to provincial Governments of surplus areas in Eastern India will secure satisfactory procurement of rice. Second, provincial Governments cannot be fairly criticised for using according to their lights powers conferred on them by Central Government to prohibit exports. Third, only course likely to secure rapid movements of rice from surplus districts to deficit district in Eastern India is the constitution of free trade rice block over widest possible area. Fourth, Central government alone can establish this block in time, repeat in time, to avoid disaster in Bengal. Fifth, two conferences with new Bengal Minister for Civil

Supplies indicate that new Government will ask for assurance from you that framing a policy they can reply upon Basic Plan operating to provide forthwith and in full planned allocation for his province as a whole.

1. Not printed.

15: Extracts from Afzal Hussains' minute – Muslim League ministry and the famine – End of April 1943

B.F. Report (1944-5), p. 195

G-Into the Breach

... 25. About the end of March 1943 the Ministry went out of office. For a month the Governor of Bengal was in charge of the administration. It was at this time that the Muslim League party was invited to accept responsibility, and a Coalition Ministry was sworn in on the 23rd of April. This was the most critical period in the recent history of Bengal and the new Ministry had to face the unprecedented problem of impending famine, during a world war, with imminent threats of invasion. There cannot be two opinions that in this crucial period an All-parties Ministry was obviously the only right thing. Various attempts were made to secure such a combination, but they proved abortive. Congress was in any case out of it, having refused to 'co-operate'. The Hindu Mahasabha was prepared to join, but on the condition that the Muslims outside the Muslim League had a share. This the Muslim League was not prepared to accept. This blame must be shared equally by all the parties for this impasse.

On 'looking back' one cannot help feeling that the Muslim League Party took a great risk in accepting office, so as to continue a parliamentary form of Government, at a time when it was evident that a terrible famine was approaching and formidable difficulties lay ahead. The difficulties were such as demanded for their solution undivided attention, vigorous action, full support and complete co-operation from everyone in Bengal and outside. They knew they could not obtain such full co-operation. On the other hand, when called upon to shoulder a grave responsibility, at the most difficult period in the history of the province and country, a refusal would have meant abdication of all constitutional rights. It would have meant a desire to rule during peace and prosperity and to seek safety during trials and tribulations.



16: Free trade in eastern zone – Beginning of May 1943

Extracts from B.F. Report (1944–5), pp. 50–1

... 28. This scheme never came into effect. During the further discussions between the representatives of the Government of India and the Bengal Government, the provincial Government maintained their preference for unrestricted free trade. At the meeting held on the 10th May with the representatives of other provinces of the Eastern Region the two schemes were discussed. Opinion was not unanimous. The Assam representative preferred 'modified free trade on the assumption that it would enable Orissa to obtain supplies from the adjoining States. The Bihar representative considered both equally objectionable. He pointed out 'that a probable result of trade would be that the scramble for supplies by Bengal buyers, with the resulting movement of enormous stocks from Bihar to Bengal, would make it impossible for the Bihar Government to guarantee food for its own labouring population at a reasonable price'. The Government of India decided that some form of free trade was essential, and in view of the insistence of Bengal on unrestricted free trade, abandoned their initial preference for modified free trade. Once again, the urgent need for a decision did not allow of the provinces being consulted. The representatives of the provinces who attended the conference on the 10th May, had no opportunity of consulting their Governments as regards the relative merits of unrestricted free trade and modified free trade.

29. The introduction of free trade led immediately to the invasion of the provinces of Bihar, Orissa, and Assam by a large army of purchasers from Bengal; in fact it began a week before. The Bihar Government have described the position as follows:

The new policy resulted in large incursion of speculators, agents of big business, hoarders and small buyers from Bengal into all the markets . . . prices flared up almost immediately. Merchants, who had previously sold their stocks to Government tried to evade delivery by any means in their power because they received higher offers from Bengal buyers. The Bengal merchants or their agents went into the interior villages and offered fantastic prices, as a result of which the arrivals of supplies in local markets were extremely poor. Prices fluctuated almost from hour to hour due to wild speculation, and ownership of goods passed through various hands before they actually moved.

But it was not only private dealers who were buying. The provincial Governments were also in the market. The Bengal Government through their agent were making extensive purchases. Directly free trade was established, the Government of Bihar ordered their Trade Adviser and District Officers to buy all available foodgrains; stocks in the mills were also bought or requisitioned. Purchases, however, had ceased by the end of June, as by that time prices in Bihar were above the maximum limits laid down by the provincial Government. The Government of Orissa improvised purchasing agencies in every district. In addition they obtained stocks by the rigorous enforcement of the Foodgrains Control Order. Merchants from outside Orissa who, without obtaining licences from the Orissa Government, had made purchases were prosecuted and their stocks requisitioned. By these means and by active purchases in the local markets the Orissa Government were able within a fortnight to acquire several thousand tons of rice at reasonable prices.

In Bihar, the food situation deteriorated rapidly on the introduction of free trade, and in order to prevent wide spread distress and panic, the provincial Government opened departmental shops for the supply of foodgrains at concessional rates to low-paid Government servants and the essential services, and 'poor' shops for relief to the poorer sections of the community. The Government of Orissa have described the effect of free trade as follows: 'it was undoubtedly the greatest factor in causing high prices, hoarding, and the unavailability of foodgrains to consumers in the latter part of 1943. . . . It caused the disappearance of rice from the local markets and led to serious maldistribution and economic maladjustments'.

30. Free trade led to serious disputes between the Bengal Government, their agent, and other Bengal traders on the one hand and the Governments of Bihar and Orissa on the other. Bengal traders were loud in their complaints of the treatment they were receiving both in Bihar and Orissa, and the agent of the Bengal Government complained that his staff was subject to many forms of obstruction in both the provinces. It was asserted that in Orissa stocks had been requisitioned in order to prevent them leaving the province. The Bengal Government joined in these complaints and asserted that other provincial Governments were doing their best to prevent rice leaving their provinces. In short, the allegations were that free trade was not being allowed to operate. These did not go unchallenged. The Bihar Government in a letter to the Central Government dated the 4th June 1943, denied emphatically that they had placed any obstruction whatsoever in the way of free trade: nor were they aware of any obstruction on the part of their officers. They added that should any specific case of obstruction be brought to their notice they would of course take necessary action and rectify the mistake and in conclusion drew the attention of the Government of India to 'the probability of such charges being made by merchants and speculators from outside the province who, in collusion with the sellers whose stocks had already been bought by the provincial Government's purchasing organization, are anxious to get control of such stocks by any means'. The Orissa Government maintained that the requisitioning undertaken in the province was confined to stocks bought by unlicensed dealers. Fortunately the dispute between the Government of Bengal and the Orissa Government in regard to requisitioning was settled amicably in September 1943.

17: The Viceroy to the Governor of Bengal

Linlithgow Collection

[NAI - Acc. No. 2336]

To

H.E. Sir John Herbert, G.C.I.E., Governor of Bengal.

The Viceroy's House,
New Delhi.

May 6th, 1943.

My dear Herbert,

Looking back through your fortnightly reports I have noticed a point which you take in paragraph 9 of your report of 13th March¹ on which I might perhaps say a word. It is the

suggestion that it is a pity that Section 57² of the constitution Act does not apply to a crisis arising from shortage of supply, and that the Act apparently provides no sanction in such a crisis, since Section 93 is not available so long as any stable alternative to the Ministry in office remains, and in any case one does not necessarily want to take over the whole field of administration in order to meet the special requirement of food. You suggested in the same paragraph that it looked as though the best thing would be for you to deal as much as possible directly with the Minister concerned and to eliminate the cabinet and other Ministers so far as constitutionally possible, explaining the reasons for this course to him and to the Cabinet.

2. The whole position has of course changed since that letter was written, for your old Ministers have gone and the new Ministry is pledged to tackle the food situation in Bengal effectively. But the issues you raise are of some importance and I think I should let you know my views about them.

3. I am doubtful in the first place (treating this issue as a general question) as to the wisdom of a Governor dealing as much as possible with the Minister-in charge and eliminating the Cabinet. I think that exception could properly be taken to that on the ground that it was not only opposed to the principle of joint responsibility underlying the constitution but that from the practical point of view it was also to be deprecated. There is the obvious risk that in any decision taken, the Ministry as such would, in the events under discussion, disown responsibility and that the Governor, instead of easing his own position, would find that he had merely created difficulties for himself by any such arrangement.

4. On the other point which you have mentioned, there is in fact a fundamental difference between the treatment of revolutionary activities for which special provision has been included in Section 57 and the food situation which arises primarily out of the war. The object of Section 57 of the Act of 1935 was to arm the Governor with powers which will ensure that measures taken to deal with terrorism and other activities of revolutionary conspirators are not less efficient and unhesitating than in the past, and it was thought necessary because of the great importance of the issues at stake and because the consequences of half-hearted action for even a short period of time might be so disastrous that the Governor must have a special power over and above his special responsibilities to take in his own hands the discharge of this duty if circumstances at any time made it necessary.

5. The problems of food and supply stand of course on an entirely different footing. They arise in an acute form solely as a result of the war situation, and one may reasonably hope that with the conclusion of the war those difficulties will become much less if indeed they do not, as one hopes that they may, disappear entirely. These are, in other words temporary difficulties arising in the course of the day-to-day administration for which no provision could possibly be included in the Constitution Act. Apart from that, even if it were possible for a Governor to take the administration of these subjects into his own hands, he would find it administratively difficult as I see it to deal with them in isolation. As it is, these matters are now being dealt with on all-India basis, and it is on that basis that a solution can be found. For practical purposes I should have expected that it would be found that a Governor has ample power to keep his Ministers on the right lines by virtue of his special responsibilities for the prevention of any grave menace to the peace and tranquillity of the province and for securing the execution of orders or directions issued to him by the Governor-General in his discretion. Success can be obtained in those matters only by the willing cooperation of the Ministers on whom rests the primary responsibility for dealing with the problem; and I am

sure that it would not be sound that on first encounter with serious difficulty a governor should resort to break down provisions which are intended to be used only as a last resort.

Yours sincerely,
Linlithgow.

- 1 Not printed.
- 2 See foot note No. 2 for Doc. No. 11.

18: Free trade in eastern zone 18.5.1943

Extracts from B.F. Report (1944-5), pp. 93-4

50. Free trade came into force in 18th May. We have described in Section C of chapter VII why this policy was adopted, how it worked, and the results it produced. In earlier sections of the present Chapter we have explained why, after the fall of Burma, it was impossible under free trading conditions to ensure the distribution of supplies of rice at reasonable prices in Bengal and the other main rice producing provinces. It is, therefore, clear to us that the decision to introduce free trade into the Eastern Region was a mistake. It could only result, not in the solution of the food problem in Bengal, but in the creation of similar conditions in other areas of the Eastern Region. We have little doubt that if free trade had been continued for a longer period it would have caused widespread distress and starvation among poorer classes in those areas. Indeed, by the middle of July prices had risen very steeply in the Eastern Region outside Bengal, and had reached a level which was placing food beyond the reach of the poorer sections of the population. It has been alleged that the provincial Governments and their officers took steps to prevent rice being despatched to Bengal. We have ourselves little doubt that there was obstruction to purchases and removal of rice in certain areas. But we do not think that this made any serious difference to the Bengal situation as a whole. As we have said, free trade, while it could not solve the problem in Bengal, was in the conditions then prevailing, a measure calculated to cause a steep rise in prices and consequent severe distress in buying areas. The attitude, helpful or otherwise, of the province concerned was not material to the success or failure of free trade.

51. We must again ask the question: what was the alternative? Two courses were at the time regarded as open. One was 'unrestricted free trade' and the other 'modified free trade'. We have described the difference between these two courses in paragraph 27 of Chapter VII. 'Modified free trade' meant the continuance of the Basic Plan, with the important modification of substituting an officer of the Central Government for the provincial Governments of the Region as the authority responsible for controlling interprovincial movements. As between the two proposals, the advantages of 'Modified free trade' were so obvious that we consider it unfortunate that the Government of India gave up their initial preference for it on the insistence of the Government of Bengal. We appreciate the anxiety of the Bengal Government to secure as large a quantity of supplies as possible, but we feel that they failed to realize the importance of securing control of all the supplies brought into Bengal from outside the province. 'Modified

free trade' would have enabled such control to be exercised for all purchases would have been made under permits granted by an officer of the Central Government. The Government of Bengal would have been able to control not only places to which supplies were sent, but also the prices at which they were sold. Further, the licensed traders could have been allotted different areas in which to make their purchases, and in this way competitive buying would have been avoided. Lastly, the serious disturbances in the markets of the buying areas caused by unregulated purchases during the free trade period would not have occurred. These advantages were lost as a result of the choice of 'unrestricted free trade'.

52. One of the most unfortunate results of free trade was that it evoked hostility to Bengal in the Eastern Region. We have already described the charges and counter-charges which were made at the time and need not repeat them. They were the inevitable result of the attempt to extract the maximum amount of rice in the shortest possible time, without regard to its effect on prices and supplies in the areas outside Bengal in which purchases were made. One particular cause of ill will and hostility was the feeling that it was not the Bengal Government or the people in need who reaped the benefit, but the traders themselves. This was true enough as far as private traders were concerned, for prices did not fall in Bengal. The same allegations were, however made and repeated before us with regard to the purchasing agent of the Bengal Government. At this period the buying of rice on behalf of Government was entrusted to a firm of rice merchants in Calcutta.¹ It was publicly alleged at the time that control over purchases made by this firm was inadequate and that undue profits were made by the firm or its agents at the expense of Government. We have given the matter our most careful consideration but have had no opportunity, within the time at our disposal, of making a detailed inquiry. Accordingly previous to the submission of this report, we have recommended to the Government of India the investigation of certain accounts and other question relating to those transactions. We feel that the matter needs to be cleared up in the interests of the Government of Bengal and the public, and in order to promote confidence in food administration in Bengal.

1. This refers to Isphani & Co. — Ed.

19. Propaganda of the Centre and the Government of Bengal criticized (April–May 1943)

Extracts from B.F. Report (1944–5), pp. 98–9

68. We have already expressed the view that the propaganda policy followed during April and May 1943 by the Bengal Government with the support of the Central Government was misguided and that it would have been better to warn the people fully of the danger of famine. As regards the inapplicability of the Famine Code, it is centrally true that the relief measures feasible in the circumstances were very different from those prescribed in the Code. Local officers would have required guidance in the unusual circumstances and the provisions of the Code would have had to be modified by special orders such as those issued to District Officers in August. Nevertheless, we believe that the declaration of famine would have been attended with certain advantages. It would have led to the appointment of a Famine Commissioner

with plenary powers over relief, who would presumably also have assumed control of food supplies allotted to the districts. It would have simplified administrative and financial procedure and removed the uncertainty with regard to such procedure in dealing with problems of relief which we believe existed to some extent in 1943. Under the Codes, District Officers are required to make frequent and detailed reports about the situation in their districts; if the Code had come into operation during the premonitory stages of the famine, the Government might have obtained earlier, clearer information about the extent of the famine and the number of people in need of relief. Finally the declaration of famine might have quickened public sympathy, both within and without the province, and focussed the attention of other provinces on the plight of Bengal, and her need for assistance, at an earlier date.

20: The Viceroy to the Governor of Punjab (June 1st, 1943)

Linlithgow Collection
[NAI - Acc. No. 2226]

To
H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor of the Punjab

My dear Glancy,

Many thanks for your Letter No. 451 of May the 29th.¹

3. I share your anxieties about the food situation. Although there has been a decline in the price of wheat in Lyallpur, and I think I saw a rate of under Rs 10 quoted at the end of last week, I agree that with the very heavy demand the price is not likely to drop much. If only we could persuade the cultivators to put on the market the usual proportion of their produce all would be comparatively well, but it is going to be extremely difficult to persuade them to do so. Meanwhile as you say the situation is becoming very difficult in the towns, but the recent measures against inflation have achieved at least a temporary success and we shall do what we can to keep up the pressure. I have written to you separately expressing the hope that your Government will take all possible steps in the same direction.

Yours sincerely,

Linlithgow

1. Not printed.



21: Effect of free trade – Braund's memo

List of Literature – Item No. 5, Nanavati Papers
[NAI] Nanavati Papers – File No. 57/44 [NMML]

Eastern Region

Confidential

Report under para 4 of Government of India Confidential Letter No. D.O. 540/S, dated 28th May, 1943.

Dated the 6th June, 1943

First Report

1. This is the first of the series of biweekly reports under paragraph 4 of the above mentioned letter. I propose, therefore, to make it a concise summary of the present situation. Future reports will, I hope, be shorter.

The Change of Free Trade

2. The change to free-trade in the Region was made on Tuesday the 18th May. The weakness of the Basic Plan was that it overlooked the forces of self-interest and lacked any sanction to overcome them. It was by this time only too obvious that the principle of cooperation between units, on which the Basic Plan was founded, had as far as this Region was concerned, failed, having degenerated first into a contest between the Centre and the Provinces upon the Basic Plan figures themselves, and finally into an attitude of non-cooperation which made it clear that other forces would have to be enlisted if the flow of foodgrains was ever to be restored. It was at this stage, following a visit of the Hon'ble Member and General Wood to Calcutta on the 7th May, that the decision was taken to try to revive the forces of trade under a full free trade policy within the Region, excepting the Assam Valley and certain Eastern States.

Summary of the Situation in Bengal – March to May, 1943

3. Throughout this period the situation in Bengal had progressively deteriorated. From the middle of March until the Middle of May Calcutta itself had been supplied on a day-to-day footing partly from its small purchases within the Province at mounting prices and partly by supplies brought in from Orissa and, in small quantities, from the Eastern States. Besides that, some 3,500 tons were all that could be procured from Assam for East Bengal. By the beginning of May prices had reached an average of Rs 25 a maund throughout Bengal, with pockets of starvation in East Bengal, where prices rose to Rs 40 a maund and more. Rice and paddy were coming into Calcutta in ever decreasing quantities. The rice ration for the seven hundred thousand industrial workers in Calcutta was in May reduced by half and, for the half so forfeited, *atta* was substituted for rice. The mining concerns in Bihar and Bengal reached the point of threatening to withdraw all but their safety men. The Railway could not obtain supplies. In the Tata industries at Jamshedpur the position was very grave. Everywhere the story was the same, that the supply, under the system by which everyone was to be fed from supplies secured by Government, had failed. Meanwhile, in this state of hand to mouth

existence, no progress at all was being made with the larger problem of curing the economic stoppage of supplies within Bengal itself. The Ministry in Bengal collapsed and after a short interval a new one took its place, but had so far had no time to make its presence felt, though there were signs that it was approaching the problem with some degree of energy.

Confusion between 'Supply' and 'Price'

4. I desire at this stage to make the comment that it was not yet realized in this Region that 'supply' was paramount in importance to 'price'. The tendency had been to become mesmerized by 'price'.

The root cause of the failure of Bengal's procurement under the Basic Plan was, and still is, its timid policy within Bengal itself under the influence of the bogey of 'price'. This too, coupled with protective individual instincts, has been equally the cause of the failure in the other Provinces. Prices will never ease until supply has been secured; while supply will never be restored as long as 'Price' is treated as the dominating factor. Even 'free trade' cannot succeed without initial, though temporary, rises in price levels. This circle is a vicious one, but it has always been 'Price' that from the very beginning has limited the horizon in the Region. This resulted first in the strangling of trade itself through a network of protective barriers, and then in Provinces being too frightened to take measures bold enough to undo the damage done.

Summary of Position in May

5 That, in the briefest language, was the situation in mid-May. The 'trade' itself in food grains had completely withered up. As a substitute, the Basic Plan on the footing of voluntary cooperation had also failed, partly, through the fear of Provinces that strong 'procurement' would drive up prices, and partly because of the strictly individual outlook of each unit. The situation in Bengal had steadily deteriorated and its diminishing supplies both from within and without had long since passed the danger line. It was in these circumstances that, after considerable deliberation, full free-trade was decided upon as the only remedy holding a prospect of success.

The Reaction to Free-trade

6. I believe that measure, not only of the justification for that step, but of the complete failure in this Region of the cooperative principle of the Basic Plan, is to be found in the reaction free-trade instantly provoked in the surrounding Provinces. In the first few days free-trade showed that it could do what the principle of cooperation had not achieved in months. Four or five lakhs of maunds were bought in the units of the Region and merchants were once more ready to trade-to trade, it is true, at high prices, but, nonetheless, for the first time to trade. Merchants, in reliance on free-trade and unrestricted movement, were once more alive. Prices in Bengal on the first day dropped by some four rupees all round and a salutary nervousness prevailed. I propose now to deal with the units of this Region one by one.

7. Assam

(1) The Assam Valley was exempted from the free-trade decision because of the needs of the Army. It was unfortunate, and the subject of some complaint when I visited Assam, that this was not made clear when the first announcement of free-trade was made. Possibly for this reason, and possibly for purely sympathetic reasons, prices in the Assam Valley for paddy have risen steeply. For the past week paddy has been coming out fairly freely under the

influence of price. It is, nevertheless, true that in the Assam Valley Messrs. Steel Bros. Ltd., who are the purchasing agents, have not the resources in personnel to reach out far enough to make their buying really effective in this very difficult area. If the Army feels the need for faster buying, they will do well to strengthen the hands of Messrs. Steel Bros. Ltd., by releasing temporarily as many of their technical personnel; from the Army as can possibly be spared.

(2) In the Sylhet Valley, I am satisfied from personal enquiries that the free-trade decision provoked from the Deputy commissioner and his subordinates a reaction which led to their adopting measures through the police and by exerting pressure on merchants, to prevent Bengal traders both from making contracts and, where they did, from moving stocks, vide the Minutes of the Meeting of the Economic Advisory Board held at Shillong on the 22nd May, 1943. Whether this was encouraged, or connived at, by Government I am not prepared to say But I am prepared to say that the Government, in anticipation of free-trade, had, in the few days before the 18th May, taken measures to 'freeze' stocks by measures of its own and in some cases by requisition.

(3) The effect was that, in the initial period following the introduction of free-trade, Bengal traders who went there in numbers prepared to buy, found themselves faced with many difficulties. But they succeeded in making considerable purchases. It is too early yet to say what the real effect has been. The waters of the rivers are not quite high enough to allow free movement. In another few days they will have risen, and then free-trade will, it is hoped, become a reality; not necessarily because it will be welcomed, but because it can't be stopped.

(4) In the meanwhile, the Assam Premier has given his assurance to the Bengal Premier and to me that his Government has no intention of hindering free-trade in the Surma Valley. He has engaged himself to address District Officers to the same effect. A public statement has been given to the press embodying this assurance. On the whole, in Assam there is at present, no insoluble problem and it remains now to see what happens. The Boro crop there has admittedly been a 'bumper' one — the best probably ever known — amounting to not less than 98,000 tons in terms of rice. Of this some 12,000 tons goes to Bengal in the form of wages to its reapers. Of the remainder not less than 50,000 tons should be surplus open, subject to transport difficulties, to the influence of free-trade.

(5) To take full advantage of this favourable situation, the Bengal Government should at once send an officer or officers into the Surma Valley to assist its traders with advice and transport help. This has been agreed to by the Assam Government. I suggest that the Bengal Government should set up collecting centres at the Steamer Ghats in Bengal to which traders can bring their paddy in country boats and whence onward transport can be made available for them by arrangement with the steamer companies. Some Government help of this kind will assist the merchants in their attempts to move purchases and I recommend it to the Bengal Government.

(6) I have no more to say about Assam for the present. The position in the Surma Valley is not intrinsically unsatisfactory and is open to be exploited to the full by free-trade. I visited His Excellency the Governor of Assam from the 2nd to the 4th May, and have promised at his request to go there again on the 12th July for the next Economic Advisory Board Meeting.

8. Orissa

(1) The facts here are too well known to need more than a summary. From the 19th May onwards there were reported to me a series of 'incidents' in Orissa from everywhere, including Sambalpur, where free-trade merchants were in operation. These reports gave rise at first to suspicion, and finally to a certainty, of:

- a) Deliberate requisitioning at less than free trade prices under Rule 75 (a) of the D.I. Rules by Orissa Government Officers of stocks actually contracted to be sold to, or already in the hands of, Bengal merchants;
- b) Requisitioning at less than free-trade prices of stocks in the hands of Orissa merchants themselves to prevent export;
- c) Pressure on merchants to sell to the Orissa Government at less than free trade prices rather than to sell for export;
- d) The 'sealing' and 'seizure' of stocks to prevent sale and movement; and
- e) The prevention of movement

(2) I regret that I cannot agree with the conclusion stated in the Secraphone Message No. 7675 dated the 25th May,¹ 1943 addressed to me by the Department that these instances which are still continuing, are the normal outcome of a policy decided upon before free-trade came into existence and have not been prompted by an intention to defeat free-trade. The facts, to my mind, proved beyond any doubt the deliberate intention for reasons of self-interest to frustrate free-trade in Orissa at any cost.

(3) At the conference at which the Hon'ble Premiers of Bengal and Orissa, with the Hon'ble Minister of supply of Bengal and the Secretary of supply of Orissa, met, in my presence, in Calcutta on the 29th May, it was with candour admitted, and indeed repeated, by the Orissa representatives that the Orissa Government intended to stock its Districts, to the satisfaction of its individual District officers, by methods of requisition, if necessary, to which free trade would be a subordinate consideration. It needs little imagination to perceive what will be the attitude of the individual District Officer himself and of his subordinates under such a lead from responsible Ministries and Officers of the Orissa Government itself. At this conference every proposal to release requisitions already made was rejected.

On the other hand, the Orissa Government are prepared to take the fullest advantage of the reopened frontiers between itself and the Eastern States. Though they complain that no supply has reached them yet, it is difficult to believe that Orissa merchants have been idle on these old established routes of trade. If, as I have little doubt they will, these trade routes reopen (if they are not already open) then Orissa reaps the full benefit of the 'heads I win and tails you lose' policy with which its so far successful defiance of free-trade into Bengal presents it.

Finally, it has to be observed that Orissa is not content to claim protection from the trade for its cyclone affected areas only. From the latest public pronouncements of its Ministers, from its telegraphic and other communications to the Government of India and from its avowed intention expressed at the conference in Calcutta, it intends to extend its claims throughout the Balassore, Cuttack, Puri and Sambalpur districts (virtually the whole rice producing area of Orissa, so far as export to Bengal is concerned); and in default of submission by me, it will presumably continue the same methods of successful frustration as are now in vogue by continuing to take the law into their own hands.

(4) There is no exaggeration that I know of in the foregoing account of the situation in Orissa. I regret to say that it amounts in my view to a calculated defiance of free trade. So far it has succeeded only too well. With the exception of Sambalpur, where there has been some slight relaxation of restriction upon movement by District officers (but only upon terms), it has succeeded in frustrating free trade into Bengal altogether. Bengal merchants, who found willing sellers in Orissa, have been deprived of their purchases by executive action in open

defiance of the Government of India's orders. They have suffered losses: and, worse still their confidence in free trade throughout the Region has suffered a blow from which it will not easily revive.

(5) I regard the case of Orissa as the test by which free trade will either succeed or fail throughout the Region. There is no alternative to free trade now. And I hope, therefore, that I may without impropriety observe that in my view the whole food problem of Eastern India and perhaps other vital issues of the future — depend on the handling of this case in Orissa now. I go this much further, and say, that I see no hope from the experience now gained that 'appeasement' will succeed. By this I do not mean that a case should ever be ignored, if made by proper methods by Orissa, for protection, where protection is proved to be needed, as for instance, in the cyclone affected area of Balasore. I made that point clear in my dealings with Orissa. But long before we reach that point we have to deal with a situation which is nothing short of open defiance of the Centre by a provincial Government and by its individual Officers. I desire to give you my assurance that, though I have felt it right, in a confidential communication of this character, to express a considered view in unequivocal language, I have by any thing I have said or written in any way compromised the Government of India should it disagree with me. I can only repeat that issue reaching far into the future depend upon the firm and correct handling of the situation in Orissa,

(6) I can see no useful purpose in my going to Orissa now. Indeed, I see some danger. The issues are, I think, now too clear to admit of compromise.

9. Bihar

(1) It would in my opinion, be an injustice to Bihar to say that the same issues as yet arise there as in Orissa, though many cases of preventive action by individual district Officers have been reported.

I have had several telephone talks with Mr Ansorge, the Governor's Advisor in Bihar. I am going there immediately myself. The Hon'ble Mr Suhrawardy has just returned. My view is that in Bihar the problem differs from that in Orissa because what obstructive action there has been has sprung, I think, from the spontaneous protective instinct of the individual district official, and not from a policy approved and fostered by the Government of Bihar. Bitterly as Mr Ansorge and Mr Williams disapprove of the assessment by the Government of India of Bihar's resources and narrow as, in some ways, their views on their duty to their neighbours have been, I sincerely believe that they are loyal to the policy of free-trade. The cases of obstruction (I know of no cases of actual requisition) in Bihar I have taken up one by one and, so far, I am meeting with a reasonable attempt by the Bihar Government to investigate them. I take a very different view, therefore, of matters in Bihar from the view I take of the situation in Orissa and I am much more hopeful of an ultimate solution.

(2) In a personal letter written by me to H.E. Sir John Herbert, I expressed the hope that he would find occasion to meet the Governor of Bihar. In a personal reply to me, Sir John (who I may now say takes an exceedingly grave view of the situation in Bengal) was inclined to treat Bihar, as in the same class as Orissa and to take the view that any form of appeasement would be, not merely useless, but dangerous. In the case of Orissa, I agree but in the case of Bihar, I certainly do not. I have, therefore, seen Sir John Herbert in Calcutta on the 5th June. He has now left the matter in the hands of H.E. the Viceroy.

(3) I am glad that steps have been taken from Delhi to impress upon Provinces that their ultimate responsibilities to their essential personnel have not been wholly released by free-trade. This is a question of academic interest into which I do not propose to wander whether this

responsibility arises from a *de-jure* obligation of every Government in a last resort towards all its subjects or from a special national responsibility imposed by the circumstances of war.

10. *The Eastern States*

There is little to say here. That little I can summarize;

(1) Messrs H.K. Dada have declined to continue as the purchasing agents in the eight excepted States, for the purpose of procuring the export needs of Cochin, Travancore and Ceylon. This gives rise to a situation upon which I have addressed the Hon'ble Somerset Butler. The situation now arising will require to be met and will afford an opportunity of correcting the position, vis-à-vis the President of the Eastern States, into which, I feel, it has never been sufficiently appreciated by the Department, I was forced by circumstances in the early stages of the crisis and from which I have not since been able to escape.

(2) Purchases in the Eastern States have been coming into Calcutta fairly freely according to railway accommodation being available. Raigarh and Mayurbhanj have been 'ringed off' by the Resident, with my consent, as 'exhausted' States pending further examination of their position. The fact remains that in two weeks of free-trade more has been produced from three or four of the Eastern States than from the whole Agency during the ten weeks of Messrs. H.K. Dada's monopoly purchasing.

11. (1) To summarize this report upto this point, it is my belief that the key to the whole problem of the rice and paddy supply of this Region now lies in Orissa. I believe that failure there means, now and in the future little short of disaster. I cannot think that any form of appeasement can succeed. On the other hand, in Assam and in Bihar I believe there are misunderstandings which can be cleared away by patience and diplomatic methods.

(2) To one other thing I desire to draw attention. Nowhere, as far as I know, has the danger of free-trade of which so much has been heard in Orissa, Bihar and Assam given rise to actual disorder. At least, no cases have been reported to me. I believe that to be significant of some exaggeration of its anticipated dangers. But if disorder has to be met, I should prefer that course now to a surrender in Orissa. I do not, however, think it very likely.

12. *Bengal*

(1) In Bengal the position is precarious. The 'emergency' supplies from the Punjab have so far failed, while from the Central provinces a maximum of 3,000 tons will have arrived within the four week period. Millets from the United provinces have been secured. But for the obstruction to free-trade, I do not think this would have much mattered as a great deal would have come in. But, in the circumstances, this failure, coupled with the wheat failure also, is very serious.

(2) Bengal Ministry has started its 'food drive'. It is meeting with some success and the peculiar thing is that there is in Bengal today, not, it is true, any collapse in prices, but a definitely downward psychology. The strategy had been well timed. If free-trade had been allowed to operate, I have no doubt that the food and anti-hoarding drive within Bengal itself would have accomplished the rest. I understand that all Ministers are about to tour the District of Bengal during the next ten days as part of the anti-hoarding and grow-more-food campaigns. The Bengal Government is, I think, now displaying considerable energy, although it is still holding back from the active operation of purchasing organisation Bengal itself.

H.B.L.B.

The only qualification which, in the light of further experience at this distance of time, I am

inclined to introduce in this account of what happened during the first 3 weeks of free-trade would be possibly slightly less generous to Bihar and rather more indulgent to Orissa. I still bear in mind that it was Orissa alone that came to the rescue in the critical days of March.

29. Though the report in the preceding paragraph gives a fair picture of the working of the early days of free-trade, the reaction in the Provinces deserves expansion both because of its ultimate effect and because of its constitutional implications. The government of Bihar on the 4th June, 1943 entered its formal protest in its Letter No. 7915-PC of that date to the Department of Food, New Delhi (Appendix O).² The Orissa Government by a telegram dated the 17th May 1943 (Appendix P)³ had already made their protest, contemplating the most serious effect in their protest, on their own distressed areas adjoining Midnapore. On the same day the Assam government had protested against the inclusion of the Surma Valley. What actually happened it was only possible to find out later. In Orissa, it now seems certain that, following the conference in Calcutta on the 10th May, at which the intentions of the Government of India were disclosed to the Supply Secretaries of the Provinces, the Government of Orissa took extensive and immediate steps to prepare and put into force a policy of wholesale requisition, notwithstanding the limitation of their powers imposed by the Government of India by the letters of the 27th March and 17th August 1942. To what actual extent stocks were requisitioned prior to the 18th May, 1943 (the actual date of the introduction of free trade), we have no means of knowing. But we do know, from subsequent data, that immediately after the 18th of May, ten lakhs of maunds were ordered to be requisitioned by the Orissa Government and by its officers in the Cuttack District, four lakhs of maunds in the Balasore District, nearly the same amount in the Puri District, and a small quantity in the Ganjam District making altogether requisitioning orders upto a total of eighteen and a half lakhs of maunds, or some 65 tons. To what extent the same thing occurred in Bihar we have no such detailed information; but we do know that, whether by official requisitioning or by the independent action of local officers in 'freezing', seizing and preventing from movement the purchases of Bengal traders, the full effect of free-trade was forestalled. It is probable that the actions of these two Governments (or of their officials) themselves contributed to the rises in price which took place. Free Trade was not allowed to operate. It was not a matter of free bargain and sale. It was a question of Bengal purchasers finding sellers who for the highest consideration possible, were prepared to take the risk of having their goods confiscated in the form of requisitioning at prices which in effect, were far below the free-trade value. Not only was resort had to formal requisitioning, but the purchase of Bengal merchants were often seized and deliberately prevented from movement. I have a letter from the sub-office Manager of the Metropolitan Insurance Companies in which he says that the Railways were ordered by the local Government not to book any rice without previous sanction either of the District Magistrate or the Sub Divisional Magistrate. Meanwhile, the office of the Regional Commissioner was flooded with complaints of every kind from traders in Bengal of the treatment they were receiving in both Orissa and Bihar. It would take too long to set these out in detail; but they can be verified from the Regional Commissioner's files. The Bengal Chamber of Commerce and the Indian chamber of Commerce made similar complaints. Messrs M.M. Isphani Ltd., who were acting as the agents of the Bengal Government, complained that they were meeting with every form of obstruction and that the attitude of the District Officers was that they were determined to prevent 'free-trade' in every possible way. Some of the agents of Messrs Isphani Ltd., were arrested in Orissa on charges under the Foodgrains Control Order. The agent of Messrs H.K. Dada was arrested and kept in custody without bail. These

measures, it is thought, were going on, in varying degrees, throughout the Provinces of Orissa and Bihar; but specific cases were more marked in Orissa. There is no doubt the introduction of 'free-trade' had brought about something like a revolt in the Provinces against the orders of the Centre, whether the inspiration for it proceeded from the Provincial Government itself, or from the initiative of its junior officers. In the Surma valley of Assam difficulties were being experienced, though not quite on the same scale as in Orissa and Bihar.

That is the briefest possible picture of the reactions of the three provinces to 'free-trade' in the Eastern Region. It was one of the reasons why 'free-trade' failed, though, as had already been admitted, it cannot be said with certainty that, in the conditions of 1943, it could ever have fully succeeded. But in spite of all this, on such calculations as it has been possible to make, it has been estimated that the eight weeks of active life of 'free-trade' yielded but little short of a hundred thousand tons of foodgrains for Bengal and saved the immediate situation in Calcutta. In a subsequent report made by the Regional commissioner to the Government of India on the 26th July he said.

While it is recognised that the enforced resort to 'regional free-trade' in Bengal on the 18th May, 1943, and the irregular executive resistance it provoked, and is still provoking, in the surrounding Provinces of the Region forced up prices in those Provinces to intolerable levels (but never as high as those in Bengal), it is a fact which is now universally recognised that it saved the situation in Bengal in May and June. And the proof is to be found in the fact that we are entering the state of siege imposed by the present break in the East Indian Railway equipped with approximately eighteen days supply of rice in Calcutta, which compares with twenty-four hours supply early in May. That fact is interesting, though I am the last person to refuse to recognise that this caused difficulties in the surrounding parts of the Region (to which nevertheless, their own resistance contributed or to use it to advocate a continuation of 'free-trade', as the only solution to the problem, in the face of opposition.

It is an interesting comment on the situation that the Regional Commissioner should have been willing to congratulate the Government of India that it was fortunate that the second greatest city of the Empire in war time possessed a food supply sufficient for eighteen days.

1, 2 and 3. Not printed

22: Article by Basudha Chakravarty in *Independent India* — 'Bengal Awaits Revolution'

Independent India — Vol. 7, No. 24
[NMML]

By Basudha Chakravarty

dt 13th June, 1943.

Death and disease from starvation have been the loss of millions in India for decades now. The reasons are well known and need no recapitulation. Deaths from undernourishment are common occurrence, occasional starvation is regarded as a matter of course. This state of things has been considered normal; but even in this context the condition of people in Bengal today has no precedent in living memory. One has heard of a dire famine nearly two hundred

years ago; the spectra of its horrors has been revived in the people's minds. The state of emergency that has prevailed in Bengal for a year and half now has landed the province in a terrible crisis.

Lonely Wail in Villages

In village few families get any thing like a normal meal. Vast numbers have for months now forgotten how their main food-rice-tastes. All sorts of dietary improvisation have had to be resorted to. Every things that could be dispensed with, has been sold off. Now no means are left. Suicides are not infrequent; deaths from starvation and insanitary eating are increasing. The starved rush to seize the hoarder's paddy and are shot at, the man made desperate by hunger enters his neighbour's potato field at night and is done to death. Even children are being sold. Prices of the crude substitutes used for rice are also reaching the prohibitive level. Whatever stocks remain in the hands of villagers will soon be exhausted and then the whole agricultural population will be involved. The next main crop is six months away. The prospect ahead is grim. Despair faces. Their vitality is sapped. All play and music have ceased. Under the scorching rays of the summer sun a strange silence is enveloping villages. Some times a wail of despair goes off from somewhere.

Women Swing on Trains

In large towns including Calcutta some shops sell rice at Government-controlled rates. There thousands of people including the very old and the very young throng throughout day and night. They wait through the night for next morning's dance. They are not in a position to mind the sunrays. Rain and wind leave them unconcerned. Of trouble and humiliation there is no end. And even after twenty four hour's wait, the stock often runs short and many have to go without food. From neighbouring villages, even fifty miles off, people come to these shops. They come on foot, they crowd into train. Old men, many of whom have never boarded a train swing on the foot-boards. Accidents are not uncommon but are in the day's lot. Old women and small children alike stake their lives on dearly bought morsel of rice. Often they have to wait for days together on the footpath to get it and have then little to eat. Some times they lie down never to wake again.

The Multitude in Rags

And their clothes are torn. They cannot afford even tolerably sufficient clothing. Soon the clothes they have will wear out and then they cannot come out at all. The multitude of people are already today in rags. The barest minimum for living in human society is now beyond their means.

Those Who Know Not What to Do

And then there are those of the lower middle class who have not yet taken their place in the multitude. They still look forward to the big people to do some thing about the situation but have heard that not before the price of rice reaches eighty rupees a maund will the big people admit a famine. Between the last remnant of respectability and the call of the multitude their lot is pitiable in the extreme.

Yet they might throw up some sort of leadership out of the present state of desperation. Some of them are asking themselves and others if murder will meet the situation. The intention to murder will develop class content. The leadership might yet emerge.

The Other Side

Side by side there is another world. Unless one sees it with one's own eyes one would not believe that it is in the same country where millions are starving to death. In it inflated wealth runs riot with drink and debauchery. The corrupt official makes the most of his opportunity. The demoralized bourgeois regards the world at his feet. The society girl is much in demand. And the profiteer laughs on the sly.

The Background

The imperialist state is effete and tries to cover its rottenness by occasional shows of power. The village landlord is pitiable in his helplessness. He needs only a kick to fall on the road-side and pine away. The capitalist thinks it the heyday of his life.

But a chasm is opening from within the bottom of society. All culture and civilization might well be submerged. Already decay is evident. The tone of life is getting lower. Vulgar artificiality is about to engulf society.

The Sequel

The masses still believe in their fate. Yet they must take their place in the world alignment of forces. Still they do not quite know who have brought them to this pass. So they often fall out among themselves. It is awful to see the hungry women at this queue fighting one another for priority. They are reduced to a position no better than that of beasts.

Yet there is something elemental about it. The people are rapidly reaching the extremity of distress. A revolution takes place only when there is no other way out. The people today see no way out. There is ferocity in their looks. It can be organized and mobilized. The division of classes in India today is not something underlying society, something hidden or abstract. It is a concrete, constant, naked picture for all to see. Equality of distribution is not text-book formula or political slogan; it is a hard, day to day, matter — of-fact need. Never was social maladjustment more apparent than it has been in India in the context of the war. Allowed to take its course it will not merge unto the fates; it will result in a cataclysm. Already one feels oneself on the edge of a precipice. Already rumblings of the approaching revolution are heard. But who is the enemy of the peoples. The people do not yet quite know. Is it the foreigner? Is it the native? Or is it both? The imperialist, the fascist, the profiteer, the corrupt official — or all together? The people do not yet know. The people would like to know. Then they would seek a way out. A revolution does not grow out of despair. It is born of hope re-awakened. Wherein lies the hope of the people today? Who will tell them?



23: The Viceroy to the Governor of Punjab

Linlithgow Collection
[NAI – Acc. No. 2227]

To
H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor of the Punjab

Viceroy's Camp, Simla, June 16th, 1943

My dear Glancy,

I have been disturbed by reports of Sir Chhotu Ram's activities in relation to food, and I now send you two press cuttings which have just been received. I cannot but regard this as a thoroughly bad performance, given general stringency, and I should value your views as to whether you can usefully pull up Sir Chhotu. Plainly the statements as reported that no wheat from Australia can be imported into India, is a down right falsehood, in any event while I have not taken advice, I should have thought that Sir Chhotu ran the grave risk of bringing himself within reach of the law if he continued to make statements of this nature or to advise holders to stand out for excessive price. I cannot but regard this matter as a very serious one, and I should welcome your early advice.

Yours sincerely,

Linlithgow

Enclosure 1 – Press cuttings

Cutting from Tribune, dated 9th June 1943.

Australian Wheat

'No possibility of its arrival in India'

Sir Chhotu Ram

Lyallpur, June 6th – Sir Chhotu Ram, Revenue Minister, Punjab addressing a gathering of about 80,000 zamindars at Samindari yesterday declared that there was no possibility of the arrival of Australian wheat in India. He further declared that no control was going to be imposed on wheat prices this year.

He reiterated his complaint against the press and declared that they were going to start their own paper, '*Punjab Jat*', for which he said, arrangements were being made. He hoped that this paper would appear by the end of next month.

(Enclosure 2)

F.O.O.C.

Translation from Urdu *Milap* (Daily) of 10th June 1943

Ch. Sir Chootu Ram's advice to the Zamindars. No possibility of wheat from Australia.

Addressing a big public gathering of Zamindars of Samundari (Lyallpur) Sir Chhotu Ram, Revenue Minister, Punjab, declared that there was neither the slightest possibility of wheat arriving from Australia nor would there be any control whatsoever on wheat prices this year.

He further emphasized that if you read in the papers anything contrary to what I have told you now, it should not be taken to mean anything but a sheer lie. He advised the zamindars that they should not be led by any sort of rumours and thus bring their stocks of wheat to the markets, but on the other hand they should sell their wheat at highest possible rates and let those people who want to buy their wheat approach them at their houses for the purpose. Dilating upon the successes of the Unionist Ministry Sir Chhotu Ram said that in enacting the laws relating to loans etc., their main aim was to ameliorate the lot of the poor and the depressed and that if the zamindars have been benefited it is merely because they are poor and aggrieved.

Sir Chhotu Ram unreservedly criticized the newspapers and said that he was about to start his own paper named *Punjab Jat*. He further added that things were nearly complete and that he hoped to have the paper out by the end of the next month.

Sir Chhotu Ram's speech ended with loud shouts of 'Control Murdabad' – means control be condemned.

An address was presented to Sir Chhotu Ram by the residents of the Tahsil (Samundari). Kwaja Abdul Rahim, Deputy Commissioner, Lyallpur thanked the Minister.

24: Governor of Bengal to the Viceroy dt 2.7.1943 (extracts)

The Transfer of Press – Vol. IV, Doc. 27

Dear Linlithgow,

5. The remedy, I am sure, is to abandon the attempt to rely on the good will of the various Provinces and on their direct assistance in administering the food grains problem in this Regional Area; and for the Central Government itself to undertake the administration with central officers at the head of the food administration in the various Provinces and Coordinating Central Executive officers over them with supreme authority throughout the area. You may think that I have somewhat of a zonal bee in my bonnet but I do claim that my ideas have been already proved right several times over. The appointments of Elderton in connection with Railway Transport, Braund in connection with refugees and Gordon in connection with security arrangements all, I maintain, confirm my point. What is now in my view essential is a sort of Regional Dictator for foodgrains in this area with complete control in that sphere over the constituent Provinces and owing allegiance solely to the Centre. In this way only can

Free Trade be expected to get a chance to operate. We have had Braund, it is true, and most helpful he has proved; but he has not been vested with the requisite executive authority to keep the situation in control.

6. Braund, as I see it, is the one man at present able to present an overall picture of the food situation in this area and personally I would rate the value of his appreciation and opinion very high. I hope that it may be possible for you to obtain from him at first-hand his impressions and conclusions.¹

7. The giving of a fair chance to Free Trade is, however desirable, the long-term policy. But while Free trade developers – I hope it will – Bengal is rapidly approaching starvation. The reports from the districts can only be described as alarming and unless we can get in food grains on something like the scale originally promised, the law and order and the labour situation will get out of hand. Already my Ministry have been forced to consider measures of relief in the districts wholly beyond the capacity of Bengal to finance; and are perforce turning to the Central Government for financial assistance. Unless the food situation is taken in hand effectively – and, as I have explained, that can only be done by the Central government – a position will be reached in which I cannot guarantee two indispensable requirements of the war effort, internal security and war production.

8. I would not like you to think that we have not been busy in Bengal setting our house in order. Our 'food drive' in the district[s] has located nearly 100,000 tons of rice (in stocks of 400 maunds and over) in the Province. (That is not to say that it is all available for purchase and redistribution by Government, but it is there). We are arranging shortly for a similar 'drive' and food census in the Calcutta area and a scheme of rationing for Calcutta is nearly complete. Various methods for relief of distress are already in operation.

9. But the essential fact remains that we cannot keep Bengal fed (certainly we cannot assume the responsibility of rationing in Calcutta or elsewhere) unless we can get foodgrains into Bengal from outside at once pending the resuscitation by all means in our power of overall normal conditions.

10. I prefer to express no opinion on the question of Free Trade for the whole of India. I adhere to the view that this Regional Area ought to be self-supporting in rice. But at the moment, Bengal's essential requirement is an immediate and increased supply of foodgrains from outside; and, to put it crudely, we are not greatly concerned whether they come from this Regional Area or from outside it.

11. I am sorry to have to trouble you with so dismal a picture. I feel that at this crisis regrets and recriminations are out of place. I can assure you that we are doing our best within Bengal and I must pay Suhrawardy's energy and enthusiasm a high tribute. But we shall have to face disaster unless we can get food grains at once in sufficient quantities from outside and resolute and powerful system of food administration (preferably by the Centre) over the entire Regional Area to bring the whole situation under control.

Yours sincerely,

J.A. Herbert

[Marginal Note – Ed.] I wonder how far he is right about the Bengal situation: about food in other provincial.

1. In this connection see Doc. 14.

25. Addl. Assistant Secretary, Government of Bengal to the Collector of Midnapore

B.F. Report (1944-5), p. 235

Letter No. 794 — Misc., Dated the 10th July 1943, From Additional Assistant Secretary, Government of Bengal, Revenue Department, to Collector of Midnapore.

Will you please refer to your Memo No. 2712-R., dated the 8th July 1943¹ and the last portion of your Memo No. 26674-R., dated the 5th July² 1943 regarding the distribution of gratuitous relief and maintenance loans.

You ask for an additional allotment of Rs 12,80,000 for distribution as gratuitous relief including Rs 10 lakhs required for meeting the present demand of the Sub-Divisional Officer, Contai. It appears from your Memo. No. 2424 (3)-R., dated the 16th June 1943³ that a sum of Rs 10 lakhs was drawn under T.R. 27 only on 16th June 1943 for meeting the requirements of the Sub-Divisional Officer, Contai. It is not quite clear why the Sub-Divisional Officer came up with a proposal for a further allotment of Rs 10 lakhs in the latter part of June as it is most unlikely that amount of Rs 10 lakhs drawn on 16th June 1943 could have been spent on gratuitous relief in cash within a short period of a week or so specially in view of the fact that a very large number of people were being engaged in test relief work throughout the month of June. The position may kindly be clarified.

2 It may be observed in this connection that due to various causes distress prevails in almost all the districts of the province and the problem of relieving the same has assumed such proportions that it is beyond the capacity of this Government to cope with the situation without the assistance from the Government of India for substantial assistance in money and foodgrains for this purpose and pending the decision of that Government it will not be possible to carry on relief measures in the cyclone affected areas of your district on the scale which was contemplated a few months ago. I am therefore to request you to see that relief is restricted to the essential minimum until the above matter is settled.

3. As regards your proposal regarding the distribution of maintenance loans to families who have between 1 ½ and 5 bighas of land. Could you kindly furnish Government with an appropriate estimate of the number of 'families' which will fall in this class so that it may be examined what is to be the likely outlay?

1, 2 & 3. Not printed.

26 Observation on the letter dt 10.7.43 (Doc. 25)

Extracts from B.F. Report (1944-5), p. 99

70. It appears that at one stage in 1943, expenditure on relief was limited on financial grounds. We are of opinion that when the lives of the people are at stake financial considerations just

not be allowed to restrict relief operations. If necessary, funds to the fullest extent required should be provided by borrowing in consultation with the Reserve Bank or the Government of India.

27: The Viceroy to the Governor of Punjab

Linlithgow Collection
[NAI – Acc. No. 2227]

To
H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor Punjab.

The viceroy's House,
New Delhi,
July 12th, 1943.

My dear Glancy,

Many thanks of your letter of 6th July,¹ No. 457.

2. The Food Conference has now completed its work in Delhi and did so with commendable speed, I understand that Sir Chhotu Ram caused a certain amount of resentment and finally elicited an outspoken protest by his insistence that the one essential was to ensure the very maximum prices for the grower. I do hope that he will gradually modify his view as he is attaching to himself all the hatred that the profiteer incurs in war time and his complete failure to enlarge his horizon and take a statesmanlike view is exasperating in a man of his ability and potential value.

3. Your important suggestion about the solution of the transport difficulties were taken into consideration that the War Transport Department can make to what must be a very determined effort for the improvement of the food position. As regards military transport I understand that many lorries are being turned off from the completed aerodromes in the Punjab and elsewhere and these might surely be used for the transport of food where necessary.

4. The action we have taken to control the textile industry and complete the production of standard cloth has had satisfactory results so far and it is interesting to find that public opinion, in spite of the strong influence of the mellowers, is strongly in favour of control measures.

[Omitted: rest of the letter – Ed.]

Yours sincerely
Linlithgow

28: Memorandum by Government of India – Food Department

The Transfer of Power – Vol. IV, Doc. 93

The Bengal Food Situation

Undated

The Bengal Government recently informed the Government of India officially that in view of the inadequate quota allotted to them under the revised Basic plan, they must disown all responsibility for the deterioration of the position in Bengal. The Food Department designed to remind that Government of the measures which had, in the past, been continuously urged on all governments and which should now be taken without delay. These measures, so far as the Bengal Government were concerned, were, apart from the rationing of Calcutta and other towns, as follows:

- (a) To estimate correctly the total *Aus* crop District by District.
- (b) To create efficient purchasing machinery to acquire the maximum proportion of the crop on behalf of the Government.
- (c) To canalise the available supplies into the hands of the Government purchasing agents and prevent competitive activities of speculators or hoarders
- (d) To induce traders and cultivators to sell, if necessary by requisitioning.
- (e) To detect hoarding, penalize profiteering and acquire compulsorily available stocks over a reasonable maximum holding.
- (f) To secure the Co-operation of the railways in preventing bookings on private account from surplus districts to deficit districts by rail, with a view to directing supplies and movements into the hands of the official agency.
- (g) To secure the distribution of surpluses in such a manner and at such a price that all persons, whatever their means, are able to obtain their share.

The Government of Bengal were warned that, if they failed to take adequate steps to secure the objects enumerated in (a) to (g) above, the Government of India would be compelled to consider what measures they should take to ensure that the domestic resources of Bengal are made use of in the most efficient manner.

2. The administrative food problem of Bengal today, as of every other deficit area in India, lies in the procurement of all domestic surpluses of foodgrains and the equitable and efficient distribution of those surpluses, as well as of foodgrains imported from other parts of India. In Bengal the problem is accentuated by the presence of Calcutta itself, with its population of nearly four million and over half the war industries of India. The situation in Calcutta and the surrounding districts is now very serious and opinion even in Bengal itself is that, unless immediate steps are taken, the position will, early in October, become still more grave. The autumn paddy crop is already coming on to the market in Bengal. Reduced, therefore, to terms of action immediately required, the task before the Bengal Government is, if disaster is to be avoided, to have ready for operation before the end of September all arrangements for (i) the food rationing of Calcutta, (ii) the setting up of an effective purchasing organisation through Bengal, and (iii) a complete reorganization of the existing transport system.

3. For this purpose, an immediate reorganization of the Bengal Government's food administration is required. It is true that certain preliminary steps have been taken, both towards the setting up of supplies in the Bengal districts and in Calcutta, but from information available to the Government of India, progress is far too slow and the measures so far taken far from adequate.

Instances are briefly as follows:

(a) The much advertised 'anti-hoarding' drive in the Bengal districts and in Calcutta has achieved very little that is positive. The Bengal Government themselves do not claim that it was more than a 'food census', disclosing stocks in the districts amounting to rather more than 300,000 tons. The Bengal Government emphasizes that this is 'stock' and is in no sense 'surplus', except to a negligible extent. In Calcutta itself practically no stocks were disclosed which could be classified as 'hoards' or were held in contravention of the Foodgrains Control Order.

(b) Since the Rationing Adviser to the Government of India left Calcutta 3 weeks ago, no progress appears to have been made in the preparation of the over-all rationing scheme for Calcutta on the lines advised by him.

(c) The procurement of the annual rice production of Bengal crop of between 8 and 9 million tons has since May been in the hands of one agent only, Viz. Messrs. Ispahani.

(d) The Bengal Government have not yet appointed a Transport Officer and all the essential operations connected with the reception and distribution of foodgrains in Calcutta are handled by the Government of India's Deputy R.F.C. It was never intended that the R.F.C. and his officers should perform the executive function properly belonging (to) Provincial government. A proper Bengal transport reorganization both inside and outside the province has long been pressed on the Government.

(e) There is tendency on the part of the Bengal Government to look on the distribution centres for the relief of a comparatively few of the destitute and poorer classes of the population, opened in Calcutta and the districts, as the limit of all possible distribution and rationing measures.

(f) The Bengal Government have never explained in a satisfactory manner their method of distribution of supplies imported from outside; the fact that part of this grain goes straight from 'controlled grain shops' and 'approved markets' into the blackmarkets is an open scandal.

(g) The arrangements for the distribution of wheat products and sugar are far from satisfactory. So is their administration of salt. Moreover, their price policy as regards both wheat products and salt requires minute investigation.

[Omitted: Para 4 — Ed.]

5. Government of India consider that the following administrative reorganization is required to remedy the defects indicated in paragraphs 1 and 2 above:

(a) The Civil Supplies Department of Bengal must be reorganized and strengthened with a very great increase in its officer establishment. It must be recognised that what Bengal needs is the creation of the best piece of administrative machinery on business lines that can be created in as short time. The following organisation under Mr Stevens as Special Food Commissioner is recommended, subject to the views of His Excellency the Governor:

Seven main Branches, of which one (No. 4) may be a purely temporary Branch, under a sufficiency of experienced and energetic officers —

- (1) Rationing (Calcutta and other urban areas).
 - (2) Supply, procurement and policy.
 - (3) Transport.
 - (4) Emergency relief of distress and destitution.
 - (5) Commodities (wheat, wheat products, salt, sugar, etc.).
 - (6) Publicity and propaganda.
 - (7) Legal and enforcement. Of these, broadly speaking, only No. 2 at present exists.
- (b) In order to expedite arrangements for the rationing of Calcutta as a matter of immediate urgency, Mr Kirby should be authorized to proceed to Calcutta as soon as the last of his lectures in Bombay is over, i.e. at the end of the next week. He should be instructed to prepare, in association with Mr Hartley, the newly appointed Director of Rationing, and at least 4 or 5 other senior officers, within 24 days, a comprehensive plan of urban food rationing for Calcutta, ready to be put into operation from the 1st of October. Into this scheme will have to be worked the existing organisation of the Bengal Chamber of Commerce which caters for over a million industrial Workers and their dependents. Probably the schemes of other industrial organisations will have to be brought in. The whole scheme will constitute a piece of intricate and difficult planning, so as to produce a uniform over-all scheme taking advantage wherever possible of existing organisations. It may well be that the Managers of the industrial schemes will have to be brought into the Department of Supply.
- (c) The Government of Bengal should appoint at least two big Firms experienced in the grain trade, for purchasing operations on behalf of the Provincial Government throughout Bengal, in addition to Messrs. Ispahani.

6. Although it is not properly the function of the Food Department to make such suggestions, it might be suggested for the consideration of His Excellency the Governor that the Civil Supplies portfolio should be transferred to the Chief Minister, or alternatively (but less satisfactorily), an arrangement whereby under Section 59 (4) of the Government of India Act, Mr Stevens became directly subject to the control and direction of His Excellency the Governor.

A further alternative would be the authorization of the Special Food Commissioner under Section 124 (1) of the Government of India Act to perform his functions under the directions of the Central Government.

Yet another alternative which deserves consideration is the immediate creation of 3 or 4 extra portfolios, all concerned with the food supply arrangements in Bengal. Such portfolio might cover rationing, transport, procurement, specific relief. These portfolios should be held by well-known and trusted persons preferably businessmen. The effect would be the creation, as it were, of the Board of Directors to supervise the control of food supply arrangements in Bengal.

If any of these measures are taken, the possibility of the resignation of the Ministry and the introduction of a Section 93 administration must be faced. It is possible that the Ministry and many others in Bengal might welcome such a development. In that case the Governor would be well advised to set up a Council of 4 or 5 representative men, some with business experience, on the lines of the 'Board of Directors suggested immediately above, to advise him specially in the direction and control of food supply arrangements in Bengal'.

29: The Viceroy to Secretary of State for India (extracts)

Transfer of Power – Vol. IV, Doc. 70

Bengal Situation

4th August, 1943

... 16. I am becoming seriously uneasy about the Bengal position and I have telegraphed to warn you of that I am forming the strong impression that Herbert has no real control of what is going on and that the administration is deteriorating very rapidly. I know that he has a very indifferent lot of Ministers, but either he does not keep in sufficiently close touch, through his official Secretaries, with what they are doing, or he is unable to keep them on the right lines. One fatal defect from which Herbert suffers in extreme degree is that he will insist on doing all the talking himself. I am told confidentially that his cabinet meetings consist very often of little more than an interminable and rather muddled homily by the Governor, which leaves the Ministers with their own words lying heavy on their chests, while the Governor fails to inform himself of the views of his Ministers. Bad administration is of particular importance in connection with food, which is such a delicate business at the present time. A report which I have seen from Braund makes it clear that the local atmosphere is far from satisfactory in that regard. And he comments that there exists no adequate organisation at present to supply, or feed, or ration Calcutta, the second largest city in the Empire, even before alarm occurs and still less afterwards; and that no provincial organisation exists to carry this out. Meanwhile the Ministers' idea of handling food has been to complain bitterly and try to get as much as they can out of the Centre. They are of course perfectly entitled to get what they can, but if there is to be any progress far more active assistance from Ministers themselves must be looked for. You should see, in this connection, the copy I send you by this bag of a letter¹ from Wood, my Food Secretary, to Suhrawardy, the Minister in charge of food, which speaks for itself. Over sugar distribution, again, there seems to be a thoroughly unsatisfactory situation in Calcutta. I have dealt with it in some detail in a letter which I sent yesterday to Herbert, and a copy of which goes to you by the bag.² As for the financial position in Bengal, I thought it well to ask Raisman, who has expressed himself in terms of great concern at the way things are moving, for a note of his views in case I should have to telegraph to you. I enclose in this letter copy of the note³ he has let me have. It speaks for itself. I may of course have to include it or the gist of it in a telegram, but would like you to see it *in extenso*.

17. Part of the trouble is, no doubt, that the I.C.S. in Bengal, though much better than in the adjoining province of Bihar, is not of the highest quality. The crucial fact is I suspect that for this most important and difficult province one needs a Governor of very different calibre from Herbert. I do not think I can be accused of having treated him with any lack of care or consideration as our correspondence over recent years will show, he has on two or three occasions been the subject of most serious concern to me, and I have had to consider whether a change would not be in the general interest. I have continued partly from perhaps an undue desire not to be hard on Herbert, partly in the sincere hope that there might be an improvement,

to carry on and as matters stand now I very gravely doubt whether a change is not called for, and I shall probably telegraph to you on this subject, once I have made up my mind before you get this letter . . .

[*Omitted:* Last few paragraphs – Ed.]

1, 2 and 3. Not printed.

30: The Viceroy to the Governor of Bengal

The Transfer of Power – Vol. IV, Doc. 75

The Marquess of Linlithgow to Sir J. Herbert (Bengal)

Telegram, MSS. EUR. F. 125/43

8 August 1943

Most Immediate

Personal

No. 1686-s. I deal below with a variety of matters in connection with the Bengal position which are causing me much uneasiness, and on which I should welcome your very early comment.

[*Omitted:* Paragraphs 2 & 3 discussing Calcutta Corporation and the financial position of the Government of Bengal – Ed.]

4. I am disturbed also to hear reports (which I recognise may be incorrect) that Birla and the Marwaris have apparently been allowed by your Government to take over a substantial responsibility for opening communal kitchens in Calcutta, selling rice at concessional rates, &c. I have had no report from you on this subject, and no comment on the serious reflection on your Government which the existence of this state of things if correct would represent, for you will realise the extent to which it would admit of being regarded as an abdication by Government of its functions. Please let me have a full telegraphic report as to the facts, with your comments if these suggestions are well-founded.

5. I am bound to add my sense of most uneasiness at handling by your Government of the food problem. (You should see in that connection Wood's letter to Suhrawardy of 3rd August.)¹ Thus they sent up no one until I addressed you personally to the recent conference. I recognise your difficulties. But I cannot resist the feeling that greater energy and drive, and better administrative organisation, are called for. Are you satisfied that Ayyar (who for your entirely personal information did not I gather impress the Food policy Committee) has the personality and resolution required? I am sending you Kirby to help over rationing. But the Provinces were warned months ago of the possibility of rationing schemes of European firms, and I would have expected a scheme to have been worked out long ago. In the same connection I gather from my Food Department that there is reason for serious complaint at

your Government's handling of the control and distribution of sugar in Bengal. Are you satisfied as to the administrative arrangements for dealing with this?

6. You will understand in the light of the above that I am far from happy about present situation in Bengal, and I would be grateful for very early report on points I have mentioned.

1. Not printed.

31: Governor of Bengal to the Viceroy

The Transfer of Power – Vol. IV, Doc. 76

Sir J. Herbert (Bengal) to the Marquess of Linlithgow

MSS. EUR. F. 125/4

Govt. House, Calcutta, 10 August 1943.

Dear Linlithgow,

I write in reply to your personal telegram No. 1686-s, dated the 9th (8th) August 1943,¹ and in continuation of my personal telegram No. 127, dated the 10th August 1943² . . .

[*Omitted: Paragraphs 2 (Calcutta Corporation), 3 (Financial position) – Ed.*]

5. Turning to the food situation, I feel myself that Ayyar is a sound man. I should have preferred European officer for the post of Director, but Pinnell, who held the appointment for some time, broke down under the strain of it, and we are so short of good European officers of the necessary calibre and experience that we have not been able to find a substitute. The rationing schemes of the European firms, for the introduction of which I personally pressed, have undoubtedly eased the general problem of rationing. Nevertheless, the problem remains considerable, and the working out of details for the rationing of a great city like Calcutta, with its attendant industrial area, is bound to take time. As I pointed out in my letter of the 5th August,³ we have not been able to utilise the Corporation services in the way that we should like, but nevertheless much preliminary work has been done. Stevens carried through successfully food census, which was taken on the 7th and 8th August, and with Kirby's assistance, he is now preparing final plans for complete rationing.

6. That portion of your telegram which relates to 'control' has been received in an incomplete form. I understand from William, however, that it relates to the control of wheat prices and sugar distribution. I shall investigate the administrative arrangements which have been made for dealing with these two subjects and will let you have a further report regarding them later on.

7. It has always been the practice in Bengal to encourage philanthropic and charitable assistance in times of scarcity, and in accordance with this principle our Civil Supplies Department issued instructions some time ago to the effect that Government would provide foodgrains at concession rates to philanthropic organisations for distribution in the Calcutta area and outside, provided that certain conditions were fulfilled. These conditions were, that the organisation should supply a list of persons to whom distribution would be made, that it

should observe a prescribed quantity and quality for the food to be distributed, that not more than one meal per diem should be distributed to one individual, and that Government should exercise general supervision over the location and administration of distribution centres. It is in terms of these instructions that the distribution of gruel by various organisations (including Birla and certain Marwaris) is being carried out; and all these arrangements are under official supervision. In this view of the matter I do not myself think that arrangements of this kind can reasonably be thought to constitute a reflection upon Government's ability to distribute food or an abdication of functions properly appertaining to itself.

Yours sincerely,

J.A. Herbert.

1 Doc. 30. 2. Not printed. 3. Not printed.

32: The Viceroy to the Governor of Punjab

Linlithgow Collection
[NAI - Acc. No. 2227]

To
H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor of the Punjab.
(Private & Personal)

*The Viceroy's House, New Delhi
August, 17th 1943*

My dear Glancy,

I owe you an answer to your letter of August the 6th¹ for which I am most grateful but I had held this up until I could write to you about the wheat position.

2. I enclose a copy of a letter which is being sent by my Food Department to your Government. As you will see it raises the matter of wheat exports from the Punjab which I know has been a great anxiety to you as it has to me.

3. I have seen enough of this business to be quite sure that the success or failure of our food administration does in fact depend very largely on the result of the Punjab efforts to comply with the Basic Plan and now modified, and of course it goes without saying that on the success of our food administration depends the control of inflation and in many respects our ability to make India a possible base for offensive operations against Japan.

4. We need not discuss for a moment the responsibility for the failure in the critical first quarter of the harvest year to export the amount anticipated. I realise that transportation has been a great difficulty and there have no doubt been many other obstacles besides.

5. But the question of future administration is so critical that I am bound to lay a great deal of emphasis upon it. I should like to be sure that your Food Supplies Directorate is strong enough on personnel. It seems to me that with a million tons of wheat to despatch a very

strong directorate must be necessary. Incidentally I was rather shaken by a recent report which mentioned that you Director of Food Supplies 'proposed to inspect the offices of the purchasing Agents from time to time'. This seemed to me rather like proposing to close the stable door on an empty stable, and I should have thought that he would have been carrying out inspections regularly during the last five months. Again, there seem to be legitimate doubts about the efficiency of at least one of your purchasing agents. Purchase and despatch of course have to be perfectly co-ordinated; I understand that at present it is not being found necessary to use more than half the increased allotment of railway wagons.

6. Then there is the matter of propaganda. I should have thought that the poisonous stuff put out by Chhotu Ram would need strong antidotes such as vigorous counter-propaganda campaign under the lead of the bigger Zamindars including Khizr. It is disturbing to hear that the quantities of wheat forthcoming from such districts as Shahpur and Sheikhpura where I understand there are big landlords, are very small.

7. I have mentioned several detailed points which you might have expected would only appear in an official letter to your Government, but my pre-occupation even with details is due to the fact that I am quite convinced that efficient administration in this matter must be secured at all costs. To put it quite clearly I mean that the procurement of the necessary surplus wheat from the Punjab is more important than any political considerations, any interests of the Ministers, and even, in the last resort, the continuance of Provincial Autonomy in the Punjab.

8. When I say this I say it after full deliberation and realise how much it means. The Punjab Ministry have ever since the beginning of the war been splendid in their outspoken support of the war effort and we owe the Punjab an immense debt which is only partly on account of the Punjab's proud position as contributor of almost half the Indian Army. Again, apart from the war effort the Ministry has put up a remarkably good show in many other ways since 1937, and the last thing I want is to see the Punjab under a Sections 93 regime. Nor do I think for a moment that this is necessary. I believe that Khizr will play the game and will take the other Ministers with him, but I am sure you will have to put the matter clearly to him and impress on him what decisive importance I attach to it. On my part I shall be only too glad to give you all possible assistance here and to do my best to ensure that transportation facilities are made available. Finally I repeat that my sole concern is with the future and that I am levelling no charges against the Punjab with regard to the past. I shall hope to hear from you as soon as possible about the action your Government have been able to take on the official reference.

[Omitted: Paragraphs 9, 10 and 11 discussing the ministry, Congress disturbances etc. — Ed.]

Linlithgow

[Enclosure]

Draft

To

The Home Secretary to the Government of the Punjab, Simla.

Sir,

The undersigned is directed to state that the Central Government have had under examination the result of the first four months operation of the Basic Plan and I am directed to bring to

your notice the extent to which wheat purchase in the Punjab have, under that programme, fallen short of anticipations.

2. After discussions and agreement it was hoped that during the current harvest year one million tons of wheat would be secured from the Punjab. Indeed, having regard to the extremely favorable crop, hopes were entertained that even larger quantities would be secured. Having regard to the normal expectancy of greater quantities being marketed and available in the months immediately following the harvest it was hoped that in the four months period April-May-June-July an average monthly quantity of some 125,000 tons would be secured. To ensure that any failure to provide adequate railway transportation would not prejudicially affect the procurement operations, special arrangements for forward buying were suggested vide paragraph 8(a), (b) and (c) of this Department Letter No. G.IV (29)/43 of the 26th of April 1943.² It is not, however, desired to enter into the reason why procurement for the four months in question has only totalled 28,000 tons, 184,000 tons, 33,000 tons and 71,000 tons, respectively, making a total of 311,000 tons against the expectancy of 500,000 tons. The purpose of this letter is to open for examination the question of what can be done to recover the ground that has been lost in the last four months. Unless some special action is taken it appears to the Central Government that even smaller aggregates will be recorded in the coming months and which, in default of much action, might fall as low as 25,000 to 50,000 tons in a month.

3. If any serious attempt is to be made to work to the modified basic plan, a programme of procurement will be required somewhat as follows:

| | |
|-----------|--------------|
| August | 75,000 tons |
| September | 125,000 tons |
| October | 150,000 tons |
| November | 150,000 tons |
| | 500,000 tons |

In this connection I am to observe that any inadequate provision of railway transport for the quantities specified need no longer operate as a brake on procurement activities. The Central Government have now made all the arrangements both for an increased allotment of wagons for food and for the storage of any quantities of wheat in Karachi that may be greater than the railway facilities that may be available from time to time through Saharanpur and Delhi.

4. The undersigned is directed to invite the very early attention of the Punjab Government to this matter and to enquire what action is proposed to improve the procurement position during the next four months of August-November with the object of maintaining and if possible improving on a programme such as specified in the preceding paragraph.

In this connection I am to observe that on the result of the Punjab Governments efforts to bring the available surplus of this year's outstandingly good Punjab wheat crop to the market and to acquire the greatest portion thereof for distribution to different Governments, will substantially rest the success or failure of the Food Administration in this country during the next 8 months.

I am,
Sir

Secretary to the Government of India.

33: News item in *Hitavada* (Nagpur) dt 21.8.1943

Hitavada
[NMML]

Nagpur, Saturday August 21, 1943

Another Civilian Resigns Story of a Censored Letter

Nagpur, Aug. 20. — Mr J.R. Blair, I.C.S., Chief Secretary, Government of Bengal had resigned from the Indian Civil Service. He arrived in India on December 18, 1914 and would be due for retirement in December next year. He has chosen to retire earlier.

This is the second instance in the last few months of a Civil service man resigning for expressing views in a private letter. The first instance was of Mr Moon¹ of the Punjab. Mr Blair, it is understood, has resigned in similar circumstances. It is reported that Mr Blair in a letter to a relative of his in England made certain remarks about the administration of Bengal. The remarks contained in the letter which, it is believed, was censored, for no letter to foreign countries can go uncensored, was brought to the notice of the higher authorities, and the resignation of Mr Blair followed.

1. This refers to Penderel Moon.

34: Government of India to the Government of Bengal

File No. 33/41/43 – Home Poll (I)
[NAI]

Telegram R. No. 7097 dated 21st August 1943.

From
Home Deptt., New Delhi.

To
Chief Secretary, Bengal.

Express

'Hindustan Times' of August 21st contains report from a Special Correspondent of a speech said to have been delivered by Mr Justice Biswas¹ at the opening of a free kitchen in Calcutta on August 10th. If speech is correctly reported, it would appear to be actionable under Defence Rule 34 (6) (g) and to be all the more objectionable as coming from High Court judge speaking

in capacity as private citizen. We should be glad to know if you have received official report of speech and what action, if any, you propose to take.

Addl Secy. Home Deptt. (3) & P.S.V.

35: Official Notings on Justice C.C. Biswas' speech (dt 21.8.1943-7.9.1943) (extracts)

File No. 33/41/43 - Home Poll (I)
[NAI]

I have brought to H.M.'s notice this morning the report of Mr Justice Biswas's speech in Calcutta on August 19th which appeared on page 4 of today's *Hindustan Times*. He agreed that we might address the Bengal Government as in the draft telegram placed below.¹ Please issue in cipher. If it can go by air mail, as an express letter, so much the better.

R. Tottenham,
21.8.43

Isn't a High Court Judge Governed by Government Servants Conduct Rules?

V. Sahay
4.9.43.

No. Vide extracts from the Rules at flag C. (quoted below)

A.O.B. - 6.9.43

A fatal omission. I do not think we can press the case further unless perhaps the papers might be shown unofficially to Patrick Spence

S.J.L. Olver
7.9.43

There does not seem to be anything to be done but S.G.G. Pub. may see. . . .

V. Sahay
7/9

S.G.G. (Public)

I think I am right in saying that Biswas J is noted for his philanthropic activities and even if the speech were actionable it would be inexpedient to proceed against him in any way.

W.H. Saumarez-Smith
Under Secy. G.G. Pub.

Appendix to Notes

Extract from the Secy. of State's Services (Conduct) Rules, 1942.

(iii) provided that nothing in these rules shall apply to any such Government Servant when holding any office specified in the schedule to these rules.

Schedule

1. Governor of a province.
2. Member of the Executive Council of the Governor General.
3. Judge of a Federal Court.
4. Judge of a High Court, Chief Court or judicial Commissioner's Court.
5. Auditor General of India.
6. Agents General for India in the United States of America and China.
7. High Commissioner for India in the Union of South Africa.

Enclosure

News items in the *Hindustan Times*, Saturday, August 21, 1943.
(Justice Biswas' speech)

Government's Responsibility
Strong Criticism By Justice Biswas.

(From a Special Correspondent)

Calcutta, Aug. 19 — Famine, flood and futility sound the keynote of the situation in Bengal. The failure of the Central Government to render even the promised help in sending foodgrains to Bengal has aggravated the crisis. Inaugurating a free kitchen run by Messrs Lakhmichand Baijnath Bhiwaniwalla on August 10, Mr Justice C.C. Biswas of the Calcutta High Court is reported to have said; 'Although he had not made a close study of the situation in Bengal, and elsewhere in India, he could not help feeling, that the present situation was rarely due to the stupid and scandalous bungling of the powers that be. It would not do to say that profiteers and hoarders had brought about the present crisis. If that were so what were the Government doing to track down and punish these men? It seemed that Government did not know their minds and had no policy. They were expected to act with foresight and vision, and if they failed to do so they must be prepared to take the blame.

'While philanthropic individuals and organizations are endeavoring to alleviate suffering, the Government seem to remain undecided about the course they should adopt; and no one has heard of a single Minister having come forward to suffer sacrifice to fill the mouth of famine.



36: Government of Bengal to Government of India

File No. 33/41/43 - Home Poll (I)

[NAI]

Government of Bengal
Home (Press) Department.
No. 837-PR.

Express Letters

From
A.E. Porter, Esq., C.I.E., I.C.S.,
Additional Secretary to the Government of Bengal.

To
The Secretary to the Government of India,
Home Department, New Delhi.

Dated Calcutta, the 2nd September 1943.

Subject Speech delivered by C.C. Biswas, J., on the 10th August 1943.

Reference: Home Department's cypher telegram No. 7097, dated the 21st August 1943.¹

The newspaper reports of this speech were noticed on publication in Calcutta and no action was considered to be called for. No official reporter was present but I enclose copy of a Special Branch officer's report. All the available versions of the speech were referred for legal advice and a copy of the Legal Remembrancer's opinion upon them is attached, in view of which the Government of Bengal do not propose to take any further action.

Additional Secretary to the
Government of Bengal.

M.S.II/LX.

Enclosure 1

F-33/41/43 - Poll (I)

Copy of Special Branch Officer's report.

Mr Justice C.C. Biswas said that the present serious food situation was the beginning of that terrible situation that was ahead of them. He condemned the Government for bungling the situation and not taking proper steps in time. Bombay and Madras took to rationing in time but nothing of the sort was done in Calcutta or Bengal. Individual endeavors to start free kitchens could only touch the fringe of the situation. There was moreover the danger that these free kitchens would attract to Calcutta thousands of people from adjacent districts and would endanger the health of the city. Government should see that these free kitchens were opened in the districts outside Calcutta and it was the duty of Government not only to supply

food stuff to these kitchens at controlled rates but should see that those who can pay get minimum rations at controlled rates and those unable to pay should get free rations. He thanked the organizers of this kitchen and declared the kitchen open.

Enclosure 2

Copy of the Legal Remembrance's Opinion

There are several different versions of what was said by Mr Justice Biswas but it does not seem to me that any of them transgresses the limits of permissible criticism. No doubt the remarks that there were worse times ahead and that this was only the beginning of the trouble might have a depressing effect but considering the actual situation and that the remarks were apparently based on the warning issued by the Minister of Civil Supplies, I do not think any Court would hold that these remarks were intended or likely to cause fear or alarm to the public, as indicated in D.I.R. 34 (6) (g).

1. Doc. 34.

37: Mr Christie to Mr Abell

The Transfer of Power – Vol. IV (Enclosure to Doc. 95 dt 2.9.43.)

His Excellency asked for brief replies to two questions;

Q.1. What is the Government of India doing to Bengal?

The Government of India is arranging to send to Bengal quantities of foodgrains, wheat, wheat-flour, rice and millets – from outside the province, by rail and sea at a rate which has averaged 300 tons a day. This is part of the planned distribution of surplus of foodgrains from supplying to receiving areas, known as the Basic Plan, and it is supplemented by additional quotas as these become available from time to time. This quantity of 1,300 tons a day sufficient to feed 3 million people on a rationed basis of lb. per head per day. It should therefore, be ample to feed the entire population of Calcutta and its suburbs, which does not exceed 3 1/2 million, including children who would not get the full adult ration. Rationing has not been introduced in Calcutta, and the above calculation is only to show that what Bengal is receiving from outside is sufficient to provide for its main food problem – the feeding of Calcutta.

The Government of India have helped the Government of Bengal financially with loans amounting to several crores of rupees.

Q.2. What is the Government of Bengal doing for Bengal?

Bengal's total normal production of rice is between 8 and 9 million tons a year. Her last crop was not a very good one and was probably about 10 per cent short of the normal figure. Bengal has also lost a small quantity of rice imported from Burma, but her net imports of this rice in an ordinary year were about 100,000 tons, a negligible figure. The cyclone damaged last winter's crop and caused great havoc in the districts of south-west Bengal. Bengal's proximity to the war zone has generally caused a feeling of nervousness which does not encourage trade,

and trade in foodstuffs in particular, to flow as freely as in normal times. The Bengal Government are, therefore, faced with stiff administrative problem of making the best use of their own resources. They have recently conducted what was publicly called an anti-hoarding drive, but was in reality no more than a food census. This, however, has revealed surplus stocks, which were not known to exist, of the order of about 350,000 tons. In addition, the Bengal Government has announced that it is taking steps to procure the maximum surpluses of the autumn paddy crop which is now coming off the fields. This crop amounts to about 2 million tons normally, and, though it does not ordinarily come out of the villages, organised buying and distribution should make a substantial quantity of it available for urban areas.

In Calcutta itself the problem of distribution has in the past not been very satisfactorily handled, but it is now being taken in hand. It is aggravated by the existence of even in normal times, a very large beggar population in the city, to which has been added a large number of destitute people from the surrounding districts, especially those rendered homeless and without resources by the cyclone. Such small resources as these people could find earlier in the year have now been exhausted, and in spite of the autumn crop the period from September to December, when the main winter crop is harvested is always a lean time for the province. The Bengal Government are trying to cope with this problem of destitution by opening centres mostly on the out-skirts of Calcutta and elsewhere throughout the province from which free distribution is made of what is known as gruel ('Kichri') This consists of a small quantity of foodgrains with pulses and vegetables. Charitable organisations are also being helped and encouraged to open distribution centres.

A great many of the problems of Calcutta will be solved as soon an efficient system of urban rationing has been introduced. This is now under active preparation and the Bengal Government have announced that they propose to introduce it from the 1st October 1943, though that may be rather optimistic.

38: Copy of a letter from Dr Rajendra Prasad to Mr P.R. Das* dated the 4th September 1943

Government of Bihar, Pol. (Spl) File No. 472/43
[Bihar State Archives]

... For weeks past I have been reading dreadful accounts of men, women and children dying in the streets of Calcutta and other places in Bengal and also seen some pictures published in the dailies of Calcutta. I cannot express how distressed I have felt. My own utter helplessness to do anything in the matter has aggravated that distress. My feeling is that in such distress non-official individuals and organisations have a duty to supplement Government relief work. I also feel that relief work done by such non-official organisation through honorary volunteers can go much further than relief organized by Government agency with the same amount of response. You can therefore realise how glad I was to learn that non-official organisations had started their work of mercy. I was more glad that you with two distinguished colleagues like Dr Sinha and Shyamnandan Sahay have issued an appeal to the people of Bihar which is receiving good response.

May I make a suggestion in view of the tremendousness of the task? It is learnt on experience

that it requires a large number of faithful and devoted workers. An appeal should be made to the cultivators and zamindars who have their own private cultivation to donate manpowah i.e. one powa or one fourth of a seer per maund of their produce. This they gladly and easily do when approached at the right time i.e. when the crop is ready in the farm yard. After all what is needed is not money but grain. And even the humblest cultivator can contribute. We used to collect much for our Congress work in this way and I am sure that if you can collect a number of good workers who can be depended on, you could easily collect a considerable quantity of grain which could be directly used for relief work.

I humbly join in the appeal, you and your distinguished colleagues have issued and hope that it will have a good response

With kind regards.

Rajendra Prasad

39: Governor of Punjab to the Viceroy

Linlithgow Collection

[NAI - Acc. No. 2227]

From

H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,

Governor of the Punjab.

(Private & Personal).

*'Barnes Court' Simla,
September 7th, 1943.*

Dear Lord Linlithgow,

Accounts of the distress prevailing in Bengal have awakened a markedly sympathetic response in all sections of the press in this province and several moves have been made by charitable associations and others to organized relief. The Premier in response to the first appeal which he issued on behalf of Bengal sufferers received a long telegram from Subbawardya of the Bengal Ministry, conveying his thanks and quoting figures calculated to prove that the Bengal Government were no longer making any kind of profit from the sale of foodgrains; this was followed up by letter giving further information. Though the figures were not convincing in all respects, the Premier has agreed to issue a further appeal to the effect that the Bengal authorities have expressed their gratitude and have given an assurance that no profit now accrues to official agencies through the sale of foodgrains; consequently doubts should now be dispelled, and there should be no hesitation in bringing grain to the market. It is to be hoped that this further appeal will help in producing the desired effect. I think it would be of considerable assistance if the Central Government would come out with a clear statement saying that they have satisfied themselves that the sale price in Bengal is reasonable and admits of no profit to the provincial Government. About 120 wagons of grain, mostly wheat, have lately been leaving the Punjab daily, and efforts are being made to increase the flow. The

amount of wheat (excluding wheat products) which under the Revised Basic Plan was still due to despatch for Civil Requirements elsewhere is, according to the latest figures available, some 185,000 tons. Out of this amount 59,000 tons have been purchased. The quantity still to be purchased for Civil Requirements outside the province thus comes to 126,000 tons. Practically no purchases have been effected lately, and it looks as if the ceiling Price should be raised by eight annas or so a maund if the flow is to be maintained. Prices have been rising slightly, but not markedly. As to Military Requirements, the amount still to be purchased stands, according to the latest figures available, at 339,000 tons. A limiting factor in speeding up military transactions is the capacity of the mills with which the military purchasing agents deal; they can only cope with about 1,200 tons a day and storage is a serious difficulty.

2. One of the consequences of the Cotton cloth and Yarn Control Order is that dealers have become apprehensive that they will be put to loss by standard cloth transactions. The provincial Government have now guaranteed agents and taken dealers against any such losses. The intention is to distribute cloth through retail dealers appointed by Government agency for the next period. . . .

[Omitted: Reference to Muslim League Unionist Party relations —Ed.]

Yours sincerely,

B.J. Glancy.

40: Viceroy to the Governor of Punjab

Linlithgow Collection

[NAI – Acc. No. 2227]

To

H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,

The Viceroy's House, New Delhi.

September, 11th /14th 1943.

My dear Glancy,

My thanks for your letter of September the 7th.¹ I have also to thank you for a previous letter of August the 25th² dealing exclusively with the food situation. I will not reply in detail to that letter at the moment though I am most grateful for your assurances.

2. I have handed on what you said in both letters to the Food Department and I note your suggestion that the Central Government should come out with a clear statement to the effect that they are satisfied that the sale price in Bengal is reasonable and admits of no profit to the provincial Government. This suggestion will be very carefully considered. It certainly seems most unfortunate that we should have to raise the selling Price for wheat in order to get a sufficient flow from the Punjab especially when the reluctance of many cultivators to sell is largely due to hope of higher prices based on the failure of control last year. It is interesting

that your objective report for the second half of August states quite clearly that large amounts are being held but I admit that without a financial incentive it is not easy to devise means of bringing it out. In the face of these difficulties your Government's offer announced by Suhrawardy to dispatch 110 wagons a day is very encouraging and I do hope you will be able to implement it.

3. I hope your scheme of distributing Standard Cloth through retail dealers appointed by Government will be successful. I attach a great deal of importance, as I know you do yourself, to successful distribution of Standard Cloth.

[Omitted: Last 3 paragraphs — Ed.]

1. Doc. 39 above.

2. Not printed.

41: Role of Annada Prasad Chowdhury and others

P.N. Chopra (ed.), *British Secret Documents* (1936), p. 331

F. 28/Cong./42-A-III.

September 15, 1943

A report from Sylhet District dated 15.9.43 refers to a number of cases of breaking of telephone wires along with the Badanpur-Karimganj Line and bamboo poles have also been found lying across the railway line near Moghla Bazar station on the Sylhet-Fenchugabj line. 50 per cent of the neighbouring villagers have been made sub-constable and the villagers have been warned. C.S.P. according to a report has decided at a meeting held at the house of Sham Lal' on 11-9-43 that the party members should not take part in food relief organisation because they believe that more the suffering of the people, the greater will be their discontent against the Government. The student workers of the party have formed a committee to counteract the C.P.I. influence among the students. The students are the representatives from various colleges.

According to secret information Annada Prasad Chowdhury played an important part in 1942 movement and it was he who arranged a meeting between J.P. Narain and the Midnapur workers. Their names were said to be S.C. Bera, A.K. Bera P.C. Das, Sashibusan Samanta of Tamluk besides others.

42: Governor of Punjab to the Viceroy

Linlithgow Collection

[NAI - Acc. No. 2227]

From H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor of the Punjab.

No. 459.

'Barnes Court' Simla,
September 16th, 1943.

Dear Lord Linlithgow,

[*Omitted*: First para discussing Jinnah and the Punjab Ministry - Ed.]

... Khizr and Sir Chotu and Sardar Baldev Singh are proceeding to Delhi today in deference to your Excellency wishes to discuss the food problem, but I do not suppose that you will have time to give Khizr a separate interview. The Premier and his colleagues all say that they are ready to do what they can in organizing a campaign to induce growers to bring their grain to the Mandis, but they think that they are much more likely to be effective in this direction if by means of action taken by the Central Government the Punjab can be definitely assured that the Bengal authorities have ceased to make a profit out of the sale of foodstuffs, there is undoubtedly a good deal of strong feeling about this abroad in the Punjab and of this I believe that Sir J.P. Srivastava is fully aware.

Yours sincerely,

B.J. Glancy.

43: Governor of Punjab to the Viceroy

Linlithgow Collection

[NAI - Acc. No. 2227]

From H.E. Sir Bertrand Glancy, K.C.S.I., K.C.I.E.,
Governor of the Punjab.

No. 470

'Barnes Court' Simla,
September 30th, 1943.

Dear Lord Linlithgow,

Will your Excellency kindly refer to your private and personal letters of the 27th¹ and 29th instant² about the grain position? Since the first of these letters was written I have had the benefit of a further discussion with you and you have given an interview to the Punjab Premier.

As regards the first paragraph of your letter of the 27th, the point that I endeavored to make is this. The Premier and his colleagues are only too willing to launch a further crusade in simplification of the appeals already made by the Premier urging growers to place their grain on the market. If this crusade is to produce the maximum effect, it seems desirable that it should contain arguments which have not been stressed already. I accordingly suggested that the Ministers should be placed in a position (a) to declare on the authority of a statement made by the Central Government that no profit of any kind was accruing to the Bengal Government directly or indirectly on transaction connected with the disposal of grain imported into that province, and (b) to point to the fact that the importation of grain into India from outside was actually proceeding on definitely substantial scale.

As to (a), I am not personally in favour of any official reference whatever being made to the actual profit that Bengal may have secured hitherto. It may be true, as Sir J.P. Srivastava has said by both the Premier and Sir Chhotu Ram to have informed them, that the Bengal authorities admit to having made a profit of Rs 33 lakhs, apart from milling proceeds, on grain brought in from the North but I cannot see the slightest advantage in giving out sensational and disturbing information of this kind. All that seems to me necessary is a statement by the Central Government that they have satisfied themselves that the Bengal authorities are now making no profit whatsoever on these transactions, but are actually incurring a loss; this might perhaps be complied with an assurance that any past profits will be more than absorbed by the result of present and future transactions, but this addition might well be omitted or deferred if it is likely to cause delay. A statement of this kind is, I consider, most eminently desirable, because the vagaries of the Bengal Government are the subject of repeated comment in the press and on every side. They will provide, until it is definitely known that they have come to an end, a most cogent argument for those who say, however, reprehensibly — if Bengal, the seat of the famine, is selling imported grain at a profit, why should the upcountry grower and dealer abstain from charging a higher price?

As to (b) — the importation of grain into India from outside, I hope that the announcement will not be long delayed. I have, as your Excellency is aware, been repeatedly urging this policy for a long time back as the most effective method of stewarding prices. I do not deny that the diversion of shipping to this purpose is to be regretted, but it seems to me to be unavoidable. Now that India stands deprived of her normal rice supplies from Burma, it would scarcely appear strange that even in wartime such steps as are practicable should be taken to provide a substitute from overseas. Such higher military authorities out here with whom I have been able to discuss matters do not seem inclined to dissent from this proposition. I drew your Excellency's attention the other day to the advice contained in the Confidential Bi-Weekly Guidance Notes on the War Situation, dated September 25th 1943, which I have lately received from Delhi — the passage runs 'point out serious concern of British Parliament over food situation in India and the fact that His Majesty's Government are giving full assistance by way of facilitating import of food-stuffs into India'. If this advice is, as I presume, authoritative, a public statement would appear to be free from objection. I am convinced that if this action is taken and if continuous and effective publicity is given to future developments of this policy, the result cannot fail to be beneficial.

There is a third line of approach to the Punjab grower a suggestion which, as I told your Excellency the other day, Raisman has mentioned to me; it is to the effect that the Central Government should sponsor some form of insurance against unduly depressed grain prices in the future. This idea has not yet, I understand, taken definite shape and in accordance with

Raisman's wishes I have said nothing on the subject to the Punjab Ministry since he spoke to me. But I have frequently pointed to them what may be called the negative aspect of this proposition. I have repeated that if the Punjab seeks to take undue advantage of the scarcity now prevailing, it can look for no sympathy in years to come when prices fall and the grower in Northern India appeals for a limitation on foreign imports. I do not suppose that any scheme such as that which Raisman had in mind can be worked out without a considerable expenditure of thought and time. But an announcement of this nature as soon as it can be released in positive and tangible form should act as a very potent leverage. Perhaps it is not too much to hope that a scheme on these lines could be developed and given out before a campaign, if that idea should find favour, is set on foot for forward purchases in advance of the next *Rabi* harvest; The Ministry and I myself are, as I have told your Excellency, disposed to recommend such a campaign provided that the practicability of imports from abroad has been adequately demonstrated.

Coming now to the second paragraph of your letter of the 27th of September, I need not, I hope, assure you that the Ministry are no less jealous of the good name of the Punjab than your Excellency and I myself. The whole of the Punjab in common with the rest of India is gravely disturbed by the plight of Bengal and we are all out to help in coming to the rescue of those in distress. I would suggest that very serious thought should be given to the question before any attempt is made to concentrate on the Punjab and on the Punjab Ministry the blame of what has come to pass. I am not fully aware of whatever criticisms may have been directed against the Punjab by Home authorities or by the press in England. *The New Statesman* is reported to have published an article in the course of which it is stated that as soon as scarcity began to manifest itself in India the Punjab Government imposed an embargo on the export of grain from its territories. In the light of what your Excellency has been good enough to say about the contribution of the Punjab to the War effort, I have no doubt that the India Office has gladly availed itself of the opportunity to point out the falseness of this strange accusation. Any challenge thrown out to the Punjab Ministry by way of holding them responsible for the Bengal tragedy is not likely to go unanswered. It is true no doubt that Sir Chhotu Ram was responsible for making remarks in the course of his voluminous speeches likely to induce growers to hold up their stocks in the hope of higher prices. I have never sought to defend him as regards this offence; as your Excellency is aware, I have taken him to task, he has given me his assurance that he will not err again in this direction, and since then, and as far as I am aware, he has kept his word. Since then the Premier issued two appeals to growers to follow his own example and bring their grain to the market. And Sir Chhotu Ram has on more than one occasion advocated the import of grain grown overseas to relieve the situation. How can it be said then that the Punjab Ministry are blackmailing the starving population of Bengal? I have no desire to resort to recriminations about the past. But if it is next to being up against the Punjab, remarks which Sir Chhotu Ram saw fit to make some time ago, it is surely permissible, leaving aside the errors and experiences of last year on which the Punjab Ministry could have much to say, to point out certain conditions now prevailing in other provinces bordering on the Punjab. On the edge of the Punjab, in the United Provinces — a territory administered under Section 93 of the Act where one might suppose that All-India interests would be given greater and more effective consideration than in a province where a popular Ministry still functions — the price of wheat is roughly three rupees a maund higher than in the Punjab. The United Provinces is a surplus province in the matter of wheat. It may be true, as Raisman indicated the other day, the Punjab surplus is

materially greater than that of the United Provinces. But Hapur is an important wheat market. Apart from Sind, Hapur in the United Provinces and Lyallpur in the Punjab were the two markets nominated by the Central Government last year as pivotal points in which the maximum price of wheat was fixed at Rs 5 a maund. Even assuming that there should be disparity of something from six annas to one rupee in favour of Hapur, there is obvious reason for the extent of the present discrepancy. If this discrepancy is allowed, as it has been, to continue, can it be expected that the Punjab grower will refrain from embarrassing the Ministry or that the Ministers will find a ready reason. It does not appear to me that any practical advantage would result from the suggestion made by Raisman the other day that action should be taken to 'suppress' the publication of Hapur prices; these will be widely known even if they are not reported in the newspapers. I do not know whether the United Province Government are making any profit out of wheat exports, but the United Press on the 18th of this month gave out the following statement:

'It is learnt that the United Provinces is exporting 40,000 tons of wheat to Bengal at Rs 16 per maund — F.O.R. Howrah'. I cannot vouch for the accuracy of this statements but I understand from the United Press representative at Simla that to the best of his knowledge no contradiction has been issued. Also it is a fact as both Raisman and Mehta, the Sugar Controller, are aware, that the United Provinces Government are charging Rs 3-2 per maund as their fee for a licence to export gur from the Province. It is reported that they are adopting the same line of action in the matter of oil seeds. Apart from the fact that such practices are not easy to reconcile with the provisions of the Government of India Act, do they not furnish a direct incentive to other provinces to make a profit from the exports of their produce? Is it not the credit of the Punjab Ministry that they have refrained from following such examples? I have every sympathy with Raisman and the Central Government in their manifold difficulties, but I think your Excellency will agree that, while not attempting to shield Sir Chhotu Ram or any other offenders for their past misdeeds, I am bound to keep you informed of the Punjab point of view. I could elaborate the argument in various other directions, but perhaps I have said sufficient on the subject. I would only repeat that I am strongly inclined to deprecate both on the grounds of justice and policy a frontal attack on the Punjab Ministry. It seems to me that in this crisis we should abstain from all unnecessary recriminations concerning the past, whether in regard to the Punjab Ministry or other authorities, and concentrate on the present and the future. As I have said we are all anxious to do out best to assist.

In the matter of inflation I have pointed out on various occasions the inherent danger to the Ministers both individually and collectively, and I shall continue to do my best to keep their attention direct to this factor.

I enclose^d for your information a copy of the communication issued to District Officers, bringing to their notice the Premier's appeals, the text of which Your Excellency has seen, and urging them to take effective action. We will do what we can to see that their efforts are not relaxed.

There is I think, only one point in your letter of the 29th instant with which I need trouble Your Excellency by adding to the length of this long letter and that relates to the Premier's remarks about cheap cloth. What he tells me he wished to point out was that the effect of the Central Government's campaign to reduce the price of cloth had only manifested itself to a very limited extent so far as the rural community is concerned. This I believe to be correct up to the present, but I am making further enquiries.

I have to indent further on Your Excellency's time when I know that you are so desperately busy but perhaps I could be permitted to come and see you one evening — Friday if that would suit you for a short time before I leave Simla. I will get Brander to ring up Laithwaite and find out whether this would be possible.

Yours sincerely,

B.J. Glancy

1. Not printed.
2. Not printed.
3. Not printed.

44: Governor of Bengal to the Viceroy

The Transfer of Power - Vol. IV, Doc. 158

Sir T. Rutherford (Bengal) to the Marquess of Linlithgow
MSS. EUR. F. 125/43

Govt. House, Calcutta, 2 October 1943

Dear Lord Linlithgow,

With reference to your letter dated 15th September¹ here is the fuller report than was possible in telegrams of the Bengal situation as it appears to me.

2. Political — The corrupt Fazlul Huq administration set the ball of mis-management rolling and the present Ministry which took over at a very difficult period did not improve matters by chopping and changing its policy from time to time. It has been hampered by bitter political controversy, which Suhrawardy's previous reputation facilitated and which has considerably added to the suspicions about its administration throughout the rest of India; by reluctance to disclose the full facts of the situation, namely that practically all imports were being devoted to feeding Calcutta and its industries and the various services classed as essential, and that the districts were largely being left to fend for themselves; by a far from strong and overburdened administrative machine; by the prevalent corrupt mentality of both the public and the lower ranks of officialdom. The grain trade is largely in the hands of the Hindus, and quite apart from commercial greed, I suspect that political feelings have had much to do with their struggle to defeat the efforts of the present Government to bring down prices to reasonable level. The big cultivators who would have surplus stocks are also mainly Hindus, and putting aside panic or greed are also affected by political feelings. I have not been able to ascertain properly why the anti-hoarding drive in the mofussil was not followed up by taking physical possession of considerable stocks for Government reserve, but I gather that Pinnell, who was all for free trade, though no longer Director of Civil Supplies, was consulted, and it was finally decided to requisition only 25 per cent of stocks over 300 maunds from cultivators and merchants with the proviso that a minimum of 300 maunds be left with the owner, though District and Sub-divisional Officers were given discretion to requisition more if necessary. Actually, no

wholesale requisitioning seems to have done, but Sub-divisional Officers have lists of where the stuff is supposed to be 'Frozen'. Ayyar tells me that one of the main difficulties was what price to pay, while Suhrawardy advances the difficulty of collecting small quantities of grain from all over a country where communications are notoriously bad. He is certainly right about this as my own excursions in 24-Parganas and Midnapore have proved to me. He maintains that the investigation had the effect of bringing out stocks as big cultivators lent or sold their surpluses to others while the merchants brought their stocks on to the market. As regards the later drive in Calcutta, Stevens says it revealed very little stock they did not know about, but I feel that it was very inefficiently conducted and suspect some biggish Muslim merchants would have also been involved over hoarding. The Police were not employed, and quite recently the Commissioner of Police has found some substantial stocks hidden away. There is still pending a scandalous case over forged permits for drawing wheat and *atta* from Government stocks in which a Muslim official, appointed by Fazlul Huq, and merchants, Muhammadans and Hindus, who subscribe liberally to relief kitchens, were involved. I have not yet had time to look into this. Then the appointment of Ispahani as sole purchasing agent, about whose premature knowledge of the free trade scheme I already reported to you from Bihar, has created an opportunity for making a stink; and I have since learnt that he had already bought large quantities in Orissa before the declaration of free trade, which however Suhrawardy assures me he made over to Bengal Government at cost price. I have verified from Campbell of Shaw Wallace & Co., that his firm was approached first by the Ministry and that they refused on the ground that with their other commitments to buy for industry, they had neither the finance, nor the organization to undertake the task, and recommend their competitors, the Ispahanis, as best able to do so. European opinion is that the Ispahanis are the most honest Indian firm in Calcutta, but there is some doubt as to what their sub-agents may have been upto in buying at one price and invoicing to Government at a higher rate. All supplies bought by the firm have been delivered or will be delivered as soon as released from Bihar and Orissa. They are paid Re 1 per cent, instead of on a maundage rate, which I think is too high. In Bihar after comparing maundage rates and ordinary purchasing commissions and the average price paid, I fixed it at 12 annas per cent to Trade Adviser and purchasing agents, Gurusaran Lal . . .² I came here with great suspicion of Suhrawardy and he is undoubtedly sly, but so far as I can make out he is subject always to his political background which weakens policy, trying to do what he can to deal with the situation, and works hard. The trouble is that he wants to go into details too much instead of confining himself to broad lines of action and wastes a lot of time wandering about India instead of getting down to the job of seeing that a properly organised and staffed Food and Supplies Department was got together with a strong man at the head of it. When I arrived, Stevens as Joint Chief Secretary and Civil Defence Commissioner had been giving most of his time to the problem for three weeks, but without the Minister to back him was having all sorts of difficulties about getting officers he wanted, and as you know the matter was complicated by the question of who was to be Chief Secretary when Blair went. Sir Nazimuddin, the Chief Minister, subject to his ideas of political patronage, Mukerjee, the Revenue Minister, who is responsible for Relief, and Muazzamuddin, the Minister for Agriculture, are I think reasonably honest. I have not bothered myself so far about the others as they do not count over this food problem. Communal consideration in regard to appointments of Indian officers, even of the I.C.S., are a nuisance. Politically Bengal with its background of communalism and the average mentality of its people has been utterly corrupted by 6 years of Provincial Autonomy . . .

[Omitted: Paragraphs 3 to 6 discussing the 'Administrative Machine' – Ed.]

7. Present Food situation – The fundamentals are:

- (1) The loss of the Burma 'Rice Ukraine' and consequent inability of the rest of India to make up Bengal's own real shortage due to bad harvests, cyclone and floods, and, from the Bengal point of view, unwise exports overseas.
- (2) The greed of the trader and panic hoarding by cultivators; failure to control prices which, with shortages in other parts of India and Ceylon, was perhaps well nigh impossible.
- (3) The dubiety of all available statistics and therefore lack of accurate knowledge of what the real shortage is.
- (4) The emphasis on keeping Calcutta fully supplied.
- (5) Bad communications made worse by the 'boat Denial Policy' of the Army.
- (6) The injury to communications by the Damodar Flood, and pressure on the Railways for Military Traffic.
- (7) Doubt about the continuance of supplies from the Punjab and regularity of receipt.
- (8) Difficulty of switching the people over to a change of diet.
- (9) Suspicions throughout India of the bonafides and efficiency of the Bengal Government not unjustified by some of their actions and mistakes.
- (10) Calcutta a bottleneck for wheat, as it is the only place where there are flour and atta mills; failure of the local Supplies Department previously to procure despatches of wheat products direct to the districts, and now when we are trying to arrange this, Railway's inability to move more than 15 wagons a day by these cross routes according to Sir Colin Garbett and Biscoe.
- (11) Failure of the Bengal Government to really organise their Supplies Department on a proper scale – it still requires strengthening.
- (12) Lack of any real knowledge where supplies, if any, within the country, are available, and which again I am not surprised at as the Government have no village organisation other than the *chowkidars* under their direct control. The local Union Boards do not seem to be of much use for such purposes though they are being used to supervise relief

1. Not printed.

2. Personal comment, not relating to Mr Lal (omitted in the original) – Ed.



45: I.G. of Prisons Bihar to the Secretary, Govt. of Bihar

Govt. of Bihar Pol. (Spl) File No. 690/43
[Bihar State Archives]

Dated the 22nd October, 1943

From
Lt. Col. I.S. Nalwa, I.M.S.,
Inspector General of Prisons, Bihar

To
The Secretary to the Government of Bihar,
Judicial Department

Subject: Petitions from security prisoners of the Hazaribagh Central Jail and the Patna camp jail praying for contributing to the Bengal Relief Fund, a portion of their daily ration of food grains.

Sir,

I have the honour to forward herewith for favour of disposal petitions (in original addressed to the Chief Secretary to the Government of Bihar, and to the Secretary, Judicial Department), on the subject noted above, by the security prisoners of the Hazaribagh central jail and the Patna camp jail, respectively, and to state that such requests cannot be granted, but there should be no objection to these prisoners writing to their relations outside to send help in money or kind.

I have the honour to be,

Sir

Your most obedient servant

Lt Col. I.M.S

Inspector General of Prisons,
Bihar

[Enclosure]

Government of Bihar
Political (Special)

From
Atul Chandra Ghosh

To
The Chief Secretary
Government of Bihar

The humble petition of the undersigned political prisoners of the Central Jail at Hazaribagh, most respectfully.

The petitioners learn from the newspapers that people are dying in hundreds in the different

parts of India from starvation due to want of food, and Government and people alike have started relief work to provide food to the starving people. One is filled with feeling of agony at the news, and is naturally eager to contribute its mite to this humanitarian work: And the prisoners in the jails of India are no exception to this attitude of human mind.

According to the jail regulation the Govt. has to provide a fixed quantity of food grains daily to each prisoner, and he consumes it as he would have done outside in the normal condition of the country. But many of the prisoners, have they been outside, would have voluntarily deprived themselves of a portion of their food for the sake of their starving brothers. The undersigned therefore, beg humbly to propose that they will gladly give half of the quantity of the food grains (rice, dal and atta) they get daily from the jail, for the sake of the starving people outside for a period of two months or till the acute food crisis be solved to some extent or till the standing crops be reaped, if the Government will be pleased to send the same to any of the relief centres in Bengal or any other province where people are dying for want of food. Though the undersigned are making this proposal, they hope that as soon as this prayer will be conceded to, many other prisoners will join in this humanitarian work.

As at present the question is only of supply of food grains, and not money, proposal of setting apart a portion of the food grains is the only feasible one for affording succour to the dying people. The undersigned, under the above circumstances, humbly pray the Government will be graciously pleased to accede to this, of contributing their mite to the succour of the starving people and apart from its independent relief work in this behalf, be instrumental thus in serving as many persons from death from starvation as there will be contributors to the scheme of succour. . . .

The undersigned hope that the Government will be able to treat this, their prayer as very urgent and to accede to it within the shortest possible time.

Hazaribagh Central Jail

Ward No. 5,

The 6th Sept. 1943

Atul Chandra Ghosh
Security Prisoner
Arun Chandra Ghosh,
Political Prisoner

Reply of the Government of Bihar

No. 3233 C. 620/43
Government of Bihar
Political Department
(Special Section)

From Y.A. Godbole, Esqr., C.I.E., I.C.S.,
Chief Secretary to Government

To The Inspector General of Prisons, Bihar

Sir,

With reference to your Letter No. 301153 dated the 22nd October 1943, I am directed to say that the request of the security prisoners about contributing to the Bengal Relief fund a portion

of their daily ration of food grains is not provided for in the Rules. Obviously participation in civil activities is against the idea of detention or imprisonment, however, noble the object of the activities may be.

They may however be allowed if they so like to ask in any letters that they are allowed to write under the Rules that a contribution may be sent for the relief of Bengal.

I have the honour to be,
Sir,
Your most obedient servant
Chief Secretary to Government

46: Destitutes in Calcutta and their relief measures — October 1943

Extracts from B.F. Report, pp. 71-4

... 22. The opening of free kitchens, and famine hospitals and wards, had some visible effect on the situation. In September a small daily ration of cooked food became available to all destitutes for the asking. Meals were given at the same time of the day in all kitchens, to prevent destitutes from getting more than one meal. The destitutes tended to gather in the neighbourhood of kitchens, sitting or lying on the pavements throughout most of the day and night. The influx of famine victims created a serious sanitary problem in the city.

23. The relief authorities were impressed by the necessity of getting the destitutes out of Calcutta and back to their villages. A special officer was placed in charge of relief work in Calcutta (the Relief Co-ordination Officer) and plans were formulated along the following lines. The first necessary step was to collect destitutes from the streets and put them in poor-houses or destitute homes in the city, those requiring medical attention being sent to hospitals. This involved the establishment of suitable homes and the development of hospital services. Next, it was proposed to create a ring of famine camps round Calcutta to which destitutes could be sent the first stage of their homeward journey; these would also serve the purpose of diverting fresh swarms of destitutes enroute to the city. Since people could not be sent back to their villages unless food was available for them there; the scheme included the provision of poor-houses and kitchens in the rural areas concerned, to prevent the starvation of the people on return to their villages.

24. In practice the scheme did not work altogether smoothly. There was at first difficulty in finding suitable accommodation in Calcutta, which was partially solved when a *bustee* area capable of accommodating several thousand people was placed at the disposal of the relief authorities by the Calcutta Improvement Trust. Camps constructed for evacuation in the event of air raids were available outside Calcutta, but these lay mostly to the north, whereas the great majority of destitutes came from the south. New camps had, therefore, to be established and the usual obstacles imposed by lack of transport and shortage of materials circumvented. Operations in Calcutta were hindered by the weak and diseased state of the famine-stricken population and their reluctance to enter Government institutions. Malicious rumours were spread about the motives of Government in collecting the destitutes. Further, the destitutes

had acquired a 'wandering habit' and resented confinement in camps. Many, placed under control, absconded if opportunity occurred. The peculiar mental condition induced by lack of food, to which reference is made in Chapter II of Part II, reduced their amenability to restraint. The following passage from the evidence of a witness concerned in famine relief illustrates some of the difficulties encountered in dealing with the destitute population;

Sickness of the population very much complicated the arrangements. There was mental demoralization which followed and it made our problem very difficult. The wandering habit amongst the children was difficult to stop. Famine orphanages had to have prison rooms. Children — skin and bone — had got into the habit of feeding like dogs. You tried to give them a decent meal but they would break away and start wandering about and eat filth. You had to lock them up in a special room. They would come to normal after they had been fed and kept for a fortnight in a decent manner. They would not wander then. They developed the mentality of wandering.

Some force was used in collecting destitutes from the streets and unpleasant scenes occurred. In the early stages the task of removal was entrusted to the police and the arrival of a police lorry in a street crowded with destitutes would be a signal for their rapid and noisy dispersal. Towards the middle of October, some 15 lorries were made available to the relief authorities and responsible Government officers, accompanied whenever possible by non-official volunteers, toured the streets and collected destitutes by more persuasive and gentle means.

25. Reference has already been made to the disruption of family ties which occurred when the destitutes left their homes and wandered into towns and cities. In the confusion prevailing in the Capital, further family separations took place. When people were picked up on the streets and taken to hospitals and homes, members of the family left behind would usually have no idea where to look for them and the latter would be equally at a loss. A special officer was appointed to undertake the re-uniting of separated families. The nature of his task, and the steps taken, are illustrated in the following account given by a witness.

In Calcutta people were very often picked up from the food kitchen centres and brought to the poor-houses. There some woman would complain that she had lost her child and that her husband had gone away. When we picked up people under compulsion it very often happened that some persons were separated from their relatives. What we did in the end was to set apart one poor house in Calcutta to which we sent all the people who were separated from their relatives. Such persons were sent to that particular poor house and when they were there picked out their lost relatives. Besides if anybody in the street said that his daughter or wife was lost he was told to go to that particular poor house and find her.

26. By the end of November 1943, the majority of destitutes had left Calcutta and had returned to their villages. It was estimated that during the relief operations, over 55,00 people were received in destitute homes, and camps. The relief organization employed a paid staff of nearly 1,500. Actually a very considerable proportion of the destitute population did not leave the city via the Government organization. When it became known that a good *aman* crop was on the ground numerous destitutes found their way home on their own account. A few thousands remained in relief institutions in Calcutta and throughout 1944 there was a steady influx of small numbers of vagrants and beggars, including people reduced to penury by the famine, who required institutional relief. But in general Calcutta had returned to normal by December 1943.

V. Relief in the Districts

27. It is not easy to give a general account of famine relief work in rural Bengal, since the urgency of the famine situation, and the extent and efficiency of relief measures, differed from district to district. The availability of supplies, the size of the district, the personality of the District Magistrate — all these affected in various ways the provision of relief and the degree of success attained. Comprehensive relief measures were first undertaken in the Chittagong district, in which a serious situation was reported as early as January 1943. Distress first became evident in the town of Chittagong and was temporarily relieved, during the early months of the year, by requisitioning supplies of rice from big cultivators in the southern parts of the district. Some 15,000 to 20,000 maunds were requisitioned. In April a scheme for supplying a ration of rice to the poor in Chittagong towns was instituted.

In rural Chittagong famine became imminent in February and March. Test relief works were opened in April and were attended by large numbers of women. Thousands of men left their families to work on military projects. It became evident, however, that work and wages alone could not prevent famine. Food was required. Free kitchens were opened in Chittagong in May, the first in Bengal. Credit for initiating this system of relief, later to be extended to most of the province, is due to the Circle Officer of Rouzan. Supplies of food for relief of various kinds were obtained with great difficulty. Some were secured by local purchase and requisitioning and in July, during the free trade period, 50,000 maunds were purchased in Assam. During the later months of the year supplies received through the Department of Civil Supplies relieved the situation. It has been estimated that about 100,000 people, out of a population of 2 millions, relieved a small ration of cooked food at free kitchens.

28. Mortality in Chittagong was high during the early months of the famine, reaching its peak in July and August. During the remaining months of 1943 it declined and by June 1944 had returned to the normal level. In Tipperah, on the other hand, where the famine began a few weeks later than in Chittagong, the peak in mortality was not reached until December, when the number of deaths was 272 per cent in excess of the quinquennial average. Throughout the first six months of 1944 mortality remained high in Tipperah. In this district relief operations compared unfavorably with those in Chittagong, chiefly owing to lack of supplies. In October 1943 it was reported that food could not be provided for kitchens, that relief was intermittent and scanty, and that cases of emaciation and deaths from starvation were numerous. The contrasting mortality trends in Tipperah and Chittagong can unquestionably be related to the adequacy of relief.

29. In Faridpur, where famine was severe, great difficulty was experienced in the running of food kitchens owing to scarcity of supplies, lack of transport, and corruption on the part of local officials in charge. Workhouses providing food and shelter were established at an early stage to replace the kitchens, and this measure proved a success. Another step was the rationing of towns and of a number of villages.

A Co-operative community Scheme, embracing some 20 villages, was initiated by the District Magistrate. This involved the pooling of the food resources of each village. Each family in the villages participated and was given a ration card ensuring its own supplies. No food was allowed to be sent out of the villages until their own needs were satisfied.

In a Dacca city a local rationing scheme was organized by a public-spirited Judge. This helped to eke out the limited supplies of rice available and assisted not only the poor, but also middle class families, to obtain food during the famine.

30. Each district had in fact its own difficulties to contend with. In some districts the situation was got under control fairly rapidly: in others confusion, inefficiency, and lack of transport and supplies hindered the provision of relief. Medical and public health measures were an essential part of relief and here again there were different degrees of achievement. The general course of relief was approximately as follows: As the famine developed, ineffective attempts were made to relieve distress by agricultural loans, test relief, and gratuitous relief as money on a small scale. Test works, which were mainly under the administration of District Boards were unsatisfactory in many areas. No measured task was exacted, supervision was lax, and there was great waste of public money. When the famine reached its height, the main problem was to obtain supplies of food, either locally or through the Government, and distribute them to the needy through free kitchens. Relatively small amounts of dry grain were issued. At this stage destitutes flocked into towns in the districts, as into Calcutta, and similar scenes were enacted, though on a smaller scale. By degrees food was provided and acute starvation diminished, relief in many areas being hastened in November and December by the help of the military transport organization. With the arrival of the harvest, and the increase in, and accelerated transport of, provincial supplies, food and work became available for the survivors. Free kitchens were replaced by work-houses and orphanages which provided food and shelter for famine victims who remained destitute and homeless. Complete recovery did not, however, follow the relief of starvation. The death rate from epidemic disease remained for many months and the satisfactory rehabilitation of the classes in the population most affected by the famine is an extensive problem which will be discussed in a later chapter.

47 Speech of Bankim Mukherjee – dt 6.11.1943

Govt. of Bihar Pol. (Spl) File No. 755, 1943
[Bihar State Archives]

Government of Bihar

Mr President and Gentlemen,

You must be reading in the newspapers about the situation obtaining in Bengal. In a way it is impossible to describe it, because what confronts the people in a place can be realized by the local people only. And even so nobody knows the distress in the whole of Bengal. You have been just witnessing what is happening every day. In a city like Calcutta dead bodies are lying on the road. A child dies in agony in the lap of its mother while the mother leaves it behind and goes about her own business. This scene is witnessed by people of every Mohalla every day. And the misfortune is that even in the face of this we do not get the warning and there is wanting the needed unity among us. The people of all Bengal should have rallied and tried to understand this. (But) what is happening? (It is) just the reverse. Factions and parties are on the increase. This is a peculiar thing. In the first place you are not agreed as to the cause of the famine. Then followed quarrels, conflicts and opposition. As to how the situation is to be improved now every party holds its own view. They are fighting. Outside Bengal there has been a false propaganda. I am told that there has been a propaganda among

the people that no foodgrains reached Bengal from outside. And Government carried on the propaganda foolishly. The Ministers carried on their propaganda. There is Mr Amery himself in the Parliament seated in a citadel. All these people are carrying on a propaganda which gives the impression that those responsible for the present condition of Bengal are the people of Bengal and the Ministry. But the truth is that in fact the greatest responsibility lies with the Central Government. The responsibility of the Delhi Government also is greatest and in order to evade it everybody from Mr Amery downwards drags the name of Fazlul Haq and sometimes of the League Ministry. The result is that when accusations are made against them, Fazlul Haq and his colleagues — the Hindu Mahasabhis, at once deny their fault. The fault lies with the present Ministry. The present Ministry denies it and holds the out-gone ministry responsible. This only proves that it is a game of the imperialists. The Central Government ignores the real point. Nobody believes in what Mr Amery says. Let us take one point. Thousands and hundreds of thousands of maunds of foodgrains are sent to Bengal. Nobody knows into what pit they are all put. They are all into a bottomless pit. But if a calculation be made (it will appear that) hardly a small portion of the many lakhs of maunds of foodgrains which the central Government had promised to send has reached Bengal up to this day. Not even half of what the Punjab Government promised could be sent, while Baldev Singh goes on saying that he had sent enough. The next thing is that Mr Amery says it is the fault of Fazlul Haq for he did not anticipate what was going to happen in Bengal. All these things are spoken. But the question is that last year in the month of December when a meeting of all the Government officials was held at Delhi, was it the fault of Fazlul Haq to have said that there was some shortage of foodgrains in Bengal and that if the Central Government was unable to make any arrangement, it should have left him free to make some arrangement and find out foodgrains anywhere he liked? His fault was that he asked the Central Government and the United Kingdom not to allow the Central Corporation to purchase food grain and export the same. If Fazlul Haq at all committed a fault it was this that he parted company with Government. . . . Probably he thought he might be in difficulty if he trusted those people. After the coming of this ministry into power it made every effort to improve the situation. Mr Suhrawardy is trying hard. He is trying to bring this famine under control and to solve the difficult situation, but the party in opposition is entirely against him. But it must be admitted that he has been trying hard. Nothing was said about this ministry on behalf of the Central Government except this that the Railway Member was not making any arrangements for the Bengal Government. When I saw Nazimuddin and made enquiries he told me that wheat was once despatched to one station and rice to another from Delhi. Instead of wheat rice was received and wheat was received in place of rice. This bungling took place but the fault lies with us. When Sir (Edward) Bernal came to Calcutta I was going to mention this thing in the meeting but Sir Benthall persuaded me not to do so but to drop the matter. He did not take any steps there but when he reached Delhi he issued a statement to the effect that the Bengal Government was unable to make arrangements. There would have been given such a reply as would have silenced them.(?)

What is the position about rice at present? Briefly it is this that 28 crore maunds of rice is required in Bengal every year. Last year there was a deficit of 4 crore (maunds) because of floods in Midnapore and some damage (to crop) in Faridpore and Noakhali also. The Marwari Chamber of Commerce said that there was a deficit of 5 crore (maunds). In November-December last the Central Assembly declared that there was no deficit in Bengal: but when N.R. Sarkar was appointed Food Minister he stated that there was not much deficit. Major

Wood, the Food officer, declared that deficit was 5 per cent. When Azizul Haq' came he said that it was 15 per cent. The Central Assembly, however, did not agree but when people began to die since the month of August he said that a drama was being enacted. Now he says that the Bengalees are to blame and Mr Amery repeats the same. In England there are distinguished members of Parliament and many foolish Englishmen who are making strange propaganda about India. The fact is that they are the masters of India (but) they are so foolish and stupid that they know both but indulge in tall talks. Then it was reported in a newspaper that a Parsi lady had spoken about the Bengal famine to the effect that the Bengalees do not like to take rice that is not grown in Bengal. What a talk forsooth! the Parsi lady is in England and is called an Indian. Some people say that Bengal is caste ridden and that people there do not take food cooked by others. What rubbish is caste? Hindu or Muslim (question) is nothing at all. If one dying of starvation can get food anywhere no question of caste will arise. The central Government promulgated an Ordinance and attempted to suppress the news about famine and they are still suppressing it. When people began to die an attempt was made to stop the news from spreading throughout the whole world, but the *Statesman*, which is an English-owned paper, did not comply and got photos printed and published throughout India. It was then that people realized the seriousness. Money began to come in. Relief committees were opened and the news spread like wild fire all over India. But the news reached England gradually and the people there raised an outcry, otherwise the people in Bengal would have died in thousands without any notice being taken of them.

There was a deficit of 4 crore (maunds) out of which some 2 crore maunds was produced in Bhadro. Thus the deficit was two and a half crores in which connection our Rutherford declared that in Bengal there was no foodgrain enough to last seven weeks. This is true to some extent. But the position at present is that for the last five or six months two to three crores of people have not taken rice. So there remained the deficit of two crores and a half. There is still one month and a half to pass in Bengal and 4 crore maunds is required for the purpose. And there has been a bumper crop this year the like of which was not seen in the last ten to twenty years. But the pity is that those who laboured are dying, so much so that nobody knows whether the crop would dry up in the fields or the very harvesters would cease to exist. All the people are dying and people are grieved at the sight of the fields for if something out of this crop had been available a little earlier the lives of hundreds of thousands would have been saved. But when the crop would ripen and be ready for harvesting it would be of no use. If there be any person who can lend two crore maunds of rice to Bengal now, he can have 4 crore maunds in return. But where is the order for this! Amery holds that the responsibility for food lies with the Bengal Government. But who has got the power? Here we have got a provincial Government. All the responsibilities have been imposed on it but under the garb of the worthless Government of India Act, 1935. Some powers have no doubt been given but it is the State or the Central Government that has got all the power in its hands. Food stuff is the responsibility of the provincial Government but you cannot import foodgrains from outside. The Bengal or the Bihar Government has got no legal right to enter into any good transaction either with another Government or in the province itself. It has got no right. Then what is the way out now? Railways are working in the country, you have no power over them. The central Government has got all the powers of transporting goods over those railways. The blame is put on the provincial Governments but they have got no power. They are enjoying all the powers. What can be done when all power is vested in the Delhi Government?

What is the situation in Bengal today? Some people are enriching themselves as a result of the war while the poor man is suffering. By taking money from the rich, poor people should be fed, but the income tax is taken by the Central Government. This is a farce of the India Act of 1935. They are proclaiming to the world that the provincial Governments are responsible for the famine in Bengal. But the responsibility rests with the Central Government alone. In the Punjab and Bengal Indian Ministries are functioning. The ministers are Indians. What is the position in Bihar and the U.P.? Why did the rate of foodgrain go up there from Rs 4 to Rs 15? Why are people dying in Madras, Cochin, Travancore, Bijapore and Andhra? Why is there famine in Orissa? Because it is the Advisers' raj there; the I.C.S. are the rulers. Everybody knows what scarcity prevails in Bengal. How did this happen? The reason is this, on account of the war the export and import of commodities stopped. The traffic on all the railways was very much increased due to the transport of the military and their food-stuffs and materials. Free trade stopped as restrictions were imposed on movement (of goods). Thus there should be a control over everything. But how to do it? According to the Central Government food grains are not sent from one place to another. By control should have been meant rationing for the forty crores of people in India. There should have been control over the prices. Surplus food grain should be controlled by Government and distributed. But this is not the case. It is unnecessary control that lakhs of maunds of food grains should be lying in Bihar, on the border of Bengal, while the neighbouring province should be starving. At Lackisarai people told me yesterday that one or two lakhs of maunds of foodgrain was lying there. They said that if permit were granted some of the foodgrain might be kept in stock and the rest sent to other places benefiting some people. Who is responsible for this? If Bengal demands from Bihar people believe that by sending something to Bengal there takes place a shortage in Bihar and the prices go up. Why do the prices rise? Who is responsible for this? In the first place the Central Government and in the second our Indian profiteers resort to black-marketing. Among them there are both Hindus and Muslims. They belong to all communities. And there is a party of such a nature that its people conceal themselves under its cover and profit by it. They pose as great patriots. In it are also included those hoarders who can openly say that the more they hoard or withhold the grain, and the more the people suffer, the more will there be discontent among the people leading to revolution as would exterminate the British Government. If thousands of people die in the streets of Calcutta, will the revolution in India be speeded up? If so, there would have been revolution in India long ago. Sufferings and discontent only prepare the grounds for revolution but do not bring it about. Revolution comes when people agitate for preparing the ground for revolution and for removing suffering which leads to unity. It does not come by dying like ants and flies. Revolution is brought about by becoming a martyr. A martyr sheds his blood for the sake of his country, dies for the sake of his country while another dies to mitigate the ills of his country. So the blood of that single martyr is more valuable than that of lakhs of afflicted and decrepit persons taken together.

The hoarders are crying that they have been doing so for the sake of the country and there are some parties also who propagate this. If relief is given, counter-propaganda is made. They ask if they should give relief for nothing; Government alone is responsible for this food crisis and the responsibility lies with it. Why should they accept responsibility for when it is the Government's duty? This provides to them a pretext and they are saved. They think that the larger the number of deaths the more will Government be exposed. It is a peculiar way of thinking. If they die in this way and expose Government, then, I would be convinced that it

is right. But the poor people die and you rejoice that Government is being badly exposed. This is no humanity. This is no patriotism. There can be love for the people and love for the country in those who have human feelings in them. He alone can be a patriot who has got in his heart love for the entire humanity, love for every child. What would the British Government mind if all our people die this time? What does it care at all? There are hundreds and thousands dying every day. Damned this sort of exposure.

It is a misfortune that there is no awakening in the country. Our leaders are not one with us. It is unfortunate that there is no unity among the different communities in our country. All the political parties are not united. This is a misfortune, but in spite of this it is our duty that we should strive to bring them together. If our leaders had been in our midst and if the Central Government had been in our hands we could have done many things, we could have averted this food crisis altogether. But should we not strive (to do so)? The people should die before our eyes and shall we remain spectators?

There is foodgrain in Bengal, but in such a way that instead of ten maunds there is fifteen maunds in some place. The well-to-do Kisans have hoarded foodgrains, keeping 20 maunds instead of ten maunds or five maunds which they actually require . . .

We could have done something if our leaders and our parties had united. When united they should declare that wherever people are holding foodgrain at the rate of 20 seers per head they should reduce the quantity and distribute among themselves the stock thus made available. The ministry functioning in Bengal at present belongs to the League party which is very powerful in Bengal. But there is also a party in opposition which will oppose anything it wants to say or do. If Suhrawardy asks the people to bring out their hoarding, Shyama Prasad Mukerjee declares that the poor would perish. When the Ministry came to power in May-June, I wanted that hoarding should be done away with and people should be approached. A committee was formed. Suhrawardy tried his best but Fazlul Haq, Kiran Shanker Roy and Shyama Prasad Mukerjee started crying and saying poor people were being oppressed, distress would increase in every home and there would be misery in every household. Even in Calcutta there are dealers in black-market. They are among Hindus, Muhammadans and Englishmen also. It was not necessary to bring them under control. A Food Committee was formed for the purpose. The A.R.P. and Civic guards will search the houses of Seths, shopkeepers and brokers while the police, those of highly influential men. I wondered why Mr Shyama Prasad Mukerjee, who is a bit annoyed with Mr Suhrawardy, never disclosed what was happening. There are men in every party who believed that big mahajans would come to an understanding with the police, but nobody said anything at that time. If price control measures is taken today, the opposition party howls it down as unsatisfactory. People at first did not agree that there were dealers in black-market, but when the price of rice was fixed by Government, at Rs 22, rice disappeared from Bengal the next day. All were agreed that there were dealers in black-market and they admit this every day; Mr Amery admits today that there is hoardings. They don't do anything but only oppose. Only the other day Mr Shyama Prasad Mukherjee was asked why he opposed. He replied that he opposed not for the sake of opposition. His contention is that it is such a stupid Government that no commendable job can be done by it, it will spoil whatever work it undertakes. The reason is that whatever will be done through Government officials is bound to be spoiled. If an attempt will be made to get hoarding released the police will not catch hold of the real persons but oppress the poor. But something has to be done in spite of all this. This leads us to two conclusions. The first thing is that all those who are fifth columnists get the full opportunity of saying, 'Let the people

die, it will lead to revolution and end of Government'. And there are others who begin to say that they are unable to do anything as long as this Government is there. So long as the Central Government is not ours we can do nothing. People will die and nobody can help. The condition of the country has deteriorated so much and still party formation is on the increase. I myself admit that Government officials take bribe, but still we have to do something. If all parties be united we can get those who take bribe arrested. If Suhrawardy and Nazimuddin want to make a reconciliation with any party they are ready. But these people will not go to work. They have come to pose as leaders. They fear lest the League Ministry might fail, and if they join the Food Committee they will try to quarrel. When I enquired of Messrs Shyama Prasad Mukerjee and Kiran Shanker Roy (they said) that they were not ready for a reconciliation. When they are sent for, they avoid coming. Then I said that if they could unite, they could do something. Really speaking there is no life, there is no spirit. As long as discontent is there the matter cannot be settled. What is required today is that the Hindus and Muslims who are dying, should be united. All those who are dying in Bengal are poor people belonging to the scheduled caste. This is a peculiar famine. The poor man dies of starvation, and in agony, but the rich man does not die in this famine. If rice is available even at Rs 200 per maund he can purchase it. He earns thousands of rupees on account of the war. The middle class people too can maintain themselves. The labourers have a strong organisation. Those who are poor shopkeepers, who are labourers and poor people, are dying. Their number must be about a crore. Similar is the condition obtaining in Midnapore, 24 Parganas, Dacca, Comilla, Chittagong, Noakhali and Faridpore. Men are dying in thousands. Barring one third of Bengal, three crores of men are dying for want of food. Out of them the life of one and a half crore can be saved if food is available to them at a slightly reduced price. So far as the rest are concerned their plight is such that they cannot purchase rice even if it sells at Rs 8 per maund or even at Rs 1 per maund. They sold their hearth and home six months ago, they sold their plough and bullocks, there is nothing left in their house. They came to Calcutta in the hope of getting foodgrains from control shops. The money they had was spent. They are now begging and dying on the roads. If foodgrain is sent from outside some at least out of these one and a half crore people may be saved, otherwise at least 50 lakhs of persons will have died by the middle of November-December, before the new crop is harvested.

The present is a time when there is panic prevailing throughout Bengal lest the Japanese planes might come. It was this very time last year in the months of December-January. They have been crying since October and saying that when there is moon-lit night they think bombing is imminent within two, three or four days. In Chittagong bombing is going on. There will be bombing in Calcutta also but this time number of planes will not be five or six. They will be about forty to fifty at least, not less than that. He (enemy) knows that Government has made some preparations. He will come in formations of hundred and two hundred planes. If half of them are finished and fifty succeed in coming we cannot even imagine what will happen. Then again not even one of those who are on the roads will be saved and so many will die. And when railway trains will cease to ply the hardship will increase four to ten times. In such circumstances the Imperialist Government thinks that it will resist the Japanese with force. This is a mistake. The Japanese advance with the speed of an arrow (shot). Does the enemy not know that if there is no life left in the people of Chittagong and Noakhali they will not be able to do anything? If they withdraw, retrace a single step, move a single pace behind, they will not find a place to stick to in India, for if there is no life left in our soldiers what will they see and how will they fight? Who is going to survive this famine and live to see?

When they will begin to fall back nobody will have the courage to speak anything. They cannot fight. If today in Bengal an army has been got ready (from) outside (it) is alright. The position in Bengal is that people are dying of starvation. It is most essential that the people of the country should be on the back of the army. (In view of) the heavy toll of hunger if there is a slight withdrawal you will perish and then imagine the condition of Bihar. In Bihar the condition will be just what it has been in Bengal after the fall of Burma. It is indispensable for Bihar as also for the whole of India that if we want to save ourselves it is our duty as well as theirs to protect our frontiers even today. Nothing can be a greater misfortune than this that (a place) becomes the battleground in this war. The war of today is no ordinary one. For Poland and other countries of Europe and for Burma, Malaya on this side it was a misfortune. If people think that in places where war has been over people are lucky at least to have got rid of the British, it is never correct, as I have said that revolution is not brought about by people dying and enduring sufferings. By becoming a battle-field a country is not set free. The greater the effort a country makes for giving help in the war and for the defence and protection of the country, the more advanced it becomes. On account of the Bengal situation the whole of India is involved in trouble. Bengal is the gateway of India and if it is breached (India) is gone. The urgent need of today is that the people all over Bengal should unite. They can then save Bengal. If all the parties, the Congress, the League, the Hindus and Muslims, come together and unanimously form a Government, then India can be saved. If there be unity the game of the imperialists will end. The parties blame one another. If we all unite we may say that there is no split and that we are all one. Today you are sparing ships for the army, while they are not available for transshipment of food to Bengal. If ten thousands tons of foodgrains could be carried to Bengal today, it could be saved. But why is food not sent? Let all the railways suspend work for the military for a week. Let 10,000 tons of foodgrains be brought daily from the Punjab, the United Provinces, Madras or anywhere. Bengal will repay. If this is not done about 50 lakhs of people are sure to die in this way. India will perish similarly. This is possible if all the parties in Bengal unite. I tell you that I am very glad that in Bihar you have formed a Food Committee. Bengal should have learnt a lesson from this. Let you send wires to your party leaders in Bengal saying, let all of you unite, we don't want to listen to any one person, let you all unite; if you don't unite the country is going to face a grave peril'. If even this message could reach Bengal it would mean help of more than a thousand rupees. The people of Bengal do not know that in Bihar people have united and overcome the food crisis. The people of Bihar and Madras should urge upon their respective Government to send foodgrains. Madras and Andhra are ready, but Government does not give the permission. This is villainy. Let the whole of India raise one voice. But there are cliques and parties. The disappointment that has overtaken India is also responsible for this state of affairs. People think that as long as war continues Government will not hand over power to anybody. If they will do so parties will begin to crop up. The Congress people think that like other places section 93 will be enforced in Bengal and there would be much wrangling. This is all wrong. Every one should cooperate and work with Government. It should be urged upon Government either to give relief or hand over all power to the people. What is needed is unity.

By the defeat of Germany and Japan people are becoming disappointed. Japan is their friend. If the British come out victorious in this war British Imperialism will become more unyielding. Then there will be no hope anywhere. It is most necessary to drive out the British and as long as they do not go away we are not safe. This view is disastrous for this nation.

It is entirely a wrong notion. This idea is the outcome of lack of political awakening. This war you have not been able to understand from the beginning. The general public have not been able to understand this. They have no complete knowledge of the war. People think that the war is between Germany and the British, between Japan and the British. If Germany and Japan are defeated there may be a great calamity. Imperialism does become stronger. The chains of slavery will be strengthened all the more, and a devastation and destruction will reign supreme in India. By the prolongation of the war the strength of the Imperialists does not increase, rather it decreases. Those who remember to have seen the war of 1914-1918, must be knowing that after devastating Germany, the British, Americans and French came out victorious in that war too. The result of the victory was that the British empire was as weak in 1918 after winning the war as it was strong during the Swaraj agitation in India. At that time was launched against the Rowlatt Act a hartal, the like of which has never been witnessed by anybody, for suppressing which Jallianwala Bagh tragedy was enacted and Martial law was also enforced in the Punjab. If Imperialism could have become stronger then those who were not opponents could not have gone to jail. Then followed an agitation against Imperialism in the whole world. In Egypt there was a change of Government. There were changes in Turkey. There was a storm in Afghanistan. In Iran (sic) Reza Shah revolutionized the whole thing. The battle of freedom gathered momentum in all the places after that war. The labour movement also gathered force after the war. In many countries in the world Government came into the hands of the labour party. By reason of the war of Imperialism succeeding, the biggest imperialist Government crashed into pieces. It was that of Czar in Russia. If imperialism had become stronger the power of Czar would have increased. Imperialism was finished in one part of the world. Kaiser was expelled from Germany and a socio-democratic Government was established. In England Government came into the hands of MacDonald who was opposed to the war and was in jail at the time of war. Those parties who were in favour of war in the last war are not so now. In the last war the Congress held moderate views because Lord Sinha was the president. The position is quite different today. Today all the principal parties in the world extending from Europe to China and Africa have got in them the consciousness of a strong independence movement, and at least one country freed from the Imperialist clutches has got on the road to victory. Mindful of the fire burning in (the hearts of) the people the Imperialists were trying their utmost to combine and crush the three powers, first, labour power in Europe and America, second, mass strength in India, China and Africa and third the nationalist power of the Soviet. Attempts have been made for the last twenty years to crush and destroy these three. The war at last started. When (they) discovered that the strength of the people was increasing and the Independence movement among labourers in the whole of Europe was becoming stronger, the first thing they did was that they crushed the labour party in their country and set up the Fascist party in its place. Hitler had no hold on Germany by reason of his force. At the back of Hitler were all the millionaires of Britain. It was then that Hitler came to power. Hitler's raj was supported not by German but by British money. With such extension of his power Hitler finished the strength of labour in Europe and he maintained he would crush Russia. The Imperialists thought that if Russia was annihilated they would settle things later on. They nursed and brought up Hitler to fight Russia. It is the British who started this war and nobody else.

The political consciousness of Indian leaders was always high. When people all over the world were asleep the leaders in India were awake. They awakened the whole world. When Japan invaded Manchuria, the Congress was the first to have raised its voice against it. The

mission sent by the League held Japan to be the aggressor but at the same time recognised the defeat of Manchuria as well as the occupation of Japan. When war broke out in China in 1937, India was the first to have raised her voice against it, so much so that our world-renowned poet Rabindra Nath Tagore strongly protested against the oppressions perpetrated by the Japanese. Noguchi, the national poet of Japan, who was a friend of Tagore, very strongly persuaded him to yield and declare that Japan was not at fault. But he did not yield and sent such a reply that the Japanese will never forget. It is there in the history of Japan. Pandit Jawahar Lal Nehru could not restrain himself and he went down to Chungking. We have got neither guns nor money, but a medical mission was despatched from this place as a demonstration of sympathy. Two of the missionaries died there in nursing the wounded Chinese soldiers. One Mr Bose came back. He was telling us that when the Chinese would see the medical party they said help had come to them. Indians raised their strongest voice against the Fascists. Similar was the case when Abyssinia was invaded. When war broke out in Spain against the Republicans Pandit Nehru got to that country. He went to England and raised his voice there, so much so that the whole world knows that nobody is opposed to Fascism more than is Pandit Jawahar Lal Nehru. The charge of being pro-Japanese was levelled by the British against him and such propaganda was made against our leaders in the whole world. It was alleged that these people were inviting Japan. There was much of this propaganda, but even so the people all over the world are saying today it is not possible for Jawahar Lal Nehru and Mahatma Gandhi, who were the first to rise their voice against Fascism, to be in favour of Fascism. All this is a game of the British. They seized the All-India Congress Committee resolution and interpreted the same before the world as they pleased. Today the ordinary masses have not advanced to this political consciousness. Like children they believe that the enemy of the British is their friend, they are opposed to British Imperialism because it perpetrates oppression and any one who strikes at it is their friend. They are quite novice in politics. When we see that they are disappointed at the defeat of the Japanese, our hopes are shattered. There is no way to save us. If you want to understand politics correctly look at this war. With the close of the last war the imperialist powers went on trying to get together. Whatever shortcomings there were in the last war were improved. 'We shall not attack your Imperialism, you may seize smaller countries'. This is what the policy of Chamberlain and the Munich Treaty meant. They allowed smaller nations to pass gradually into the hands of Germany. The controversy was as to who would play the role of leader among the Imperialists – whether England or Germany. Chamberlain thought that if he could make (Germany) fight Russia it would be entangled there, that if Russia was defeated (he) would have to go to make peace and have the lion's share. Hitler knew that the war in Russia would end soon and then he would fight the Anglo-Americans. That is why he left(?) It is Germany and Russia who can change the fortunes of this war. The whole world has come to know that Russia and Germany are fighting for two different purposes. . . .

. . . After the defeat of France people expelled Chamberlain. The public hardly understand politics. The game of these British Imperialists is very queer but when once people understand it the game does not succeed even for a few seconds. Hitler did not want to destroy England. If he wanted to do so he would have got there after (the fall of) France. Chamberlain too did not want to finish Germany. Chamberlain wanted the Imperialist party to win. In his book *Mein Kampf* Hitler writes that he is born to destroy Russia, and he never believed that he would suffer defeat in Russia. That is why he sent Director No. 2 to England. Can Churchill send Amery to Germany? Hess went (to England) with some big Imperialist design. But it is

a pity the public fail to realise this. No sooner had Hess reached there and some talks were going to be held than a revolution broke out in England and the masses awakened! The policy of Chamberlain could not succeed and it was for this reason that as soon as Hess arrived the six crores of people in England started clamouring and asking why (Hess) had come. The Communist Party explained why he had come. The Imperialists suffered their first defeat the very moment when England had to confer with Russia.

When Japan was rapidly advancing in 1940, people began to say, 'Give us power; we can be saved now or we shall perish'. Our leaders conferred and Jawaharlal Nehru persisted that they should keep the road open for future (negotiation). At the Bombay session Maulana Abul Kalam Azad said, 'I will do nothing of the kind; give us power and we will devote all our strength to the defence of India'. The Imperialist Government was afraid of the leaders lest Mahatmaji would do what he pleased if it did not listen to their words. If Mahatmaji could do what he liked India would have been spared this misfortune. The Imperialist Government arrested our leaders and separated them from us because it knew that Mahatmaji had the power to write to Stalin and to Chiang-Kai-Shek (and say), 'In the prosecution of the war the anti-Fascists have reduced us alone to helplessness. Let our hands and feet be untied, we shall stand up'. In order to stop this thing being done the leaders were arrested. It seized the All India Congress Committee resolution and went on telling that they were friends of Japan. It has all the powers of Government and could do what it liked. It was on account of the Imperialists that the masses took the wrong course and the Imperialists got the opportunity of saying that the Congress had done that. They proved the opponents of the Fascist capitalists of the world to be their allies. If we have true love of country in our hearts it is the duty of the 40 crores of people throughout India to openly acknowledge their mistake (and say) that they could not have committed the mistake if their leaders had been with them. If this is broadcast from every place the masses of the world will be on your side. The mission of Jawahar Lal Nehru, Chiang-Kai-Shek and Stalin will be fulfilled, namely that you will be one of the parties to the big State that will be formed in the end. We should raise our voice in the whole of India.

If we declare that we are enemies of Fascism, one of the pillars on Imperialism collapses. In India unity is needed. The British carry on the propaganda that the example of Hindus and Muslims living in India is that one is ready with a razor in the hand only seeing for an opportunity to cut the throat of the other. By carrying on this propaganda in the world they have humiliated India. These Anglo-Americans say that if they left us we shall mutually kill each other. If we trust each other mutually, accept that both Hindus and Muslims are equally patriotic and deny the intention of making slaves of Muslims, there would be confidence among both. It is not a difficult thing to do. Everybody wants his country to be free. But the question is that some leaders rise and say; Is India one or two? This is an important question. In my opinion it is one whole. Indians cannot all be one nation. We Indians are one just as we take the people of England to be one. China, Japan and Burma are all one. The controversy of Akhand Hindustan and Pakistan has been persisting. What does it mean? People do not want to make India one. This is why such a big nation is a slave. India was the cradle of philosophy and Mathematics, as also of Astronomy and Medical science. India awakened the whole world. A politician like Chanakya was born here. For the last two thousand years India has been successively under the yoke of one after the other. There are other countries in the world lucky enough to have frontiers which help them to defend themselves. In India, between the Himalayas on the one side and the Vindhya range on the other it is all a plain. If any one

comes through the Khyber pass he goes up to Tripura and not even a small part of the country can remain safe. If India had been one nation it could not have been so. If India be free and possess the power of a united nation, then alone can there be unity. If Bengal wants to remain a part of India it can do so, otherwise it may go out. If all of us want to remain united how can we rule over the Pathans from Delhi by force? If Pantji will be the Prime Minister he will exercise his authority. If he uses force, why should the Peshawaris obey him? But if they are told that they are independent and they may live separately, they will choose to remain with India. Then there is an end of the controversy about Akhand Hindustan and Pakistan. History tells us that we have been reduced to slavery only because there was no unity amongst us and one community went on trying to make the other subservient. Therefore it is necessary for the Congress and the League to come together. Unless they are united the propaganda of the imperialists cannot be exposed nor can we become free. With unity India should build a strong pillar. The message of unity should be carried to each and every home of 40 crores of people. Should you listen attentively to what the Communist Party is doing and be determined to do the same, it will take you five minutes. If 40 crores realized that unity was needed and that it would bring them independence then the Imperialists would be exposed. The propaganda carried on by them that there was no unity in the country and that the leaders were Fascists, all this would be exposed and all their propaganda would come to nothing. These Imperialist propagandists will be gone for good. If masses all over the world unite a national Government is established. For getting India free and removing all sufferings it is necessary to form a national Government without which India can never be happy. National Government can be formed only when we are united and our leaders are released. Then alone can we oppose Fascism together. In this war the strength of the masses is increasing from day to day and the Imperialists are carrying on a propaganda in order to curb this ever increasing strength. The strength of the masses is increasing, politics bears testimony to it. People believe that after the defeat of Germany and Japan, the imperialism of the British will become powerful, the fetters of slavery will be stronger than ever not likely to be broken for thousands of years. But this is a wrong belief.

Of these Imperialists there are three enemies; first the Soviet Republic of Russia, second, the labour strength of Europe and America and third, the independence movement of India, China and Africa. These three together will put an end to Imperialism; nobody else can do it. This is the opinion of the Communist Party, whether people like it or not. No nation in the world can be independent unless it identifies itself with the masses and oppose Imperialism. Fascism is another form of strict Imperialism. Unless the Labour (Party) in India understand this, there will be no end of slavery and the chains of Imperialism will be getting strong. The fate of the world is going to be decided in this war. The freedom of Asia depends on the independence movement in India and China, for otherwise the Imperialist hold will be getting stronger and stronger. Arabia, Egypt and Palestine have been enslaved on account of India and therefore it is incumbent upon India, and it rests with India alone, to have Asia, Africa and the Middle East get rid of slavery. If in this war India declares itself as anti-Fascist, the masses of the world go ahead. The strength of the masses will completely encircle the Imperialists. There will be the strength of labour in Europe and America on one side, the Soviet Republic of Russia on the second and the independence movement of India and Asia on the third. These three together will encircle Imperialism and it will come to an end. Now, the circle will be complete if India also identifies itself with the strength of the masses.

The Anglo-American and other Imperialists know that they will have to bend before the

strength of the masses and that imperialism will be shattered to pieces in this war. In order to bring discredit on India the leaders have been confined in jail and they carry on propaganda as they like. Our leaders are not out of jail to expose them and to tell the truth and explain to the people. When the circle will be complete, Tojo, Hitler and all the Imperialists will come to an end and the world will be happy. It is a game of the Imperialists to imprison the leaders of this country and to accuse them of being pro-Fascist, so that may not allow India to stand against Fascism. The British Imperialists are very cunning and know well how to make a propaganda.

This war is a great opportunity. If once it slips out it will not come again. The times of war do not come again. It is no wonder if in 1943 revolution breaks out in Germany. It is no wonder if the war in Europe comes to an end. After this will be over the war of Japan. 1944 will be the decisive war. If something is going to happen, it will happen in November-December. The decisive result will then follow. If we lag behind today how shall we be able to hear of the result? If we do something in this war well and good, otherwise we shall perish. There is very little time left. In the meantime has to be brought Hindu Muslim agreement, Congress-League rapprochement. Fascism has got to be opposed by all together and release of leaders secured, and with their release National Government has to be established. In keeping with its dignity India will participate in the Peace Conference where the fate of the whole world will be decided. The time for India's battle is come. Within three to four months your demoralization will disappear. Your leaders will be released. If the way you misbehaved in August, work be done to the extent of even one-tenth, we shall not let India remain a slave in 1944.

Translated by Hariballabh Narain Head Asst.
Translation Deptt.

48. Judgement by Chief Justice Derbyshire and Justice Lodge in profiteering cases — dt 10.11.1943

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

From the Crown
Mr J.M. Majumdar,
Mr Debarata Mukerji.

Derbyshire, C.J.

In the twelve cases of convictions under (r) 814 of the (II) Defence of India Rules, namely, profiteering cases, this court of its own motion issued rules upon the respective persons convicted to show cause why their sentences should not be increased. We did so, as I have said, of our own motion because it seemed to us that inadequate sentences were being inflicted, and that the prosecution was not appealing against them. It is of course the duty of the Government to enforce the law. The High Court is only concerned with seeing that the laws

are enforced according to their meaning and tenor; but we have power to call for the records of cases and examine them, and, if we think that they have not been dealt with correctly, to deal with them. But as I have said it is the duty of Government to enforce the law.

As long as ordinance No. 11 of 1942 was in operation, there were serious difficulties in the way of our calling for the records of a case of profiteering, considering it and enhancing the sentence; but when ordinance No. 11 of 1942 was repealed we were at liberty to do so, and we did accordingly call for the records of a large number of cases of profiteering which had been dealt with by Magistrate in the Calcutta area. We examined these cases, and in the twelve cases under consideration we issued Rules to show cause why the sentences should not be increased. It necessarily took sometime for us to consider the cases and to have the records prepared, and they have been brought on at the earliest possible date. We have no special staff to deal with cases of this kind.

The first batch of six cases was dealt with by a Magistrate at Alipore who did not, following the usual practice outside the presidency, gave a statement of the reasons why he passed the sentences that he did. The other six cases were decided in Presidency Division and the Magistrate there gave reasons for what he did.

We have perused the reasons that the Presidency Magistrate gave for the sentences he imposed. In some sentences he deals with the individual cases, but he also gives reasons of a more general nature. He says that in most cases the persons convicted and sentenced by him were petty shopkeepers and hawkers and that they only charged one to two annas more than the controlled price. I may point out that in some instances they charged considerably more than one or two annas. He also says:

I have seen cases in which the accused stated and proved that they were threatened with prosecution on previous occasions and they avoided it on payment of certain sums of money to the poor box maintained by the police and to such other funds, and they were prosecuted later as they could not make further payments. In some cases they were acquitted as the charges failed and in some they were let off with fines as it did not seem proper to pass severer sentences than under the circumstances of the particular cases seemed adequate. Moreover, severer sentences of fine can be of no avail as the accused will not be able to pay and will go to jail. Sending these people to jail will also serve no useful purpose. A panic will be created in the city to scare away the petty dealers from the market causing further untold inconvenience to the public.

The bigger dealers are rarely prosecuted and those who sell at the source, never. No action is taken when the cases are found to be false by the Court. Frivolous cases are still coming in as usual.

The cumulative effect of all this is that when a petty shopkeeper or hawker is hauled up for trial and pleads guilty and explains why he charges a few pice more than the price fixed by Government and appeals to temper justice with mercy, the Magistrate has to take everything into consideration and pass a sentence which in his discretion and according to the circumstances of the case appears to him to be adequate. He has also to take into account that no sentence based on mere speculation regarding profits being made by the accused persons can be supported by law. Also that they are arrested by police and are not released on bail till they are produced before a Magistrate. It often happens that they cannot give bail and remain in custody for sometime.

That is a general explanation. As I have said in most instances the overcharge is more than one or two annas. As for the rest I cannot agree that is a reason for not giving sentences which will be an effective deterrent for what is unquestionably a grave and, in my view, a growing evil, namely, profiteering and breaking the law which prescribes that goods and articles should not be sold at more than the controlled prices.

I think that the remarks that he has passed with regard to the police poor box are of a grave character. This Magistrate is a Presidency Magistrate and presumably is well-informed on this matter. I can only say that if contributions to the police poor box are used as a substitute for prosecution according to law and punishments according to law, the sooner the practice ceases the better, both from the point of view of the public and from the point of view of the police. The practice lends itself to abuse, and an abuse which may bring those who use it within the reach of the law. Apparently the practice is of old standing, but I think the remarks which the Presidency Magistrate has made and those which this court has made are worth urgent consideration by the police. The Magistrate then goes on.

The bigger dealers are rarely prosecuted, those who sell at the source, never.

I think there is a good deal of obvious truth in this observation. But that is no excuse for not enforcing the law where occasion requires. There have been some hundreds of prosecution for profiteering; most of those have been against relatively small dealers such as shopkeepers. In some of the instances today it has been alleged that the shop-keeper had to pay more than the controlled prices for the goods they dealt with and it has been used as some excuse for they themselves having sold at more than controlled prices. It is no excuse at all. But the fact that the matter has been raised gives the authorities notice that the large dealers are not being dealt with according to law, and it gives the authorities opportunity of enquiring from the smaller dealers as to whom they bought from, and the prices and terms on which they bought. It gives those responsible for the enforcement of the law a warning, and points out the way in which they can proceed to enforce the law against the bigger dealers. I can only say that this court will watch the matter very anxiously. It is open to the persons who have been convicted and been before us today to give information to the prosecution in any case where they have bought at more than the controlled price, and it is their duty as citizens to do so and see that these breakers, who are in a bigger way of business than themselves, are brought to justice so that this system of wholesale breaking of the law — which is sometimes camouflaged by the term 'black-market' — is put an end to.

I realise that the penalties which Magistrates are empowered to inflict are inadequate to the evil which has arisen. Under the Defence of India Rules the maximum sentence is three years imprisonment and/or a fine. The maximum fine which a Magistrate can inflict is rupees one thousand, and that fine may be altogether inadequate to prevent breaches of the law which result in profits running in some cases into lakhs of rupees. Magistrates should not hesitate to use their powers, and where a fine of rupees one thousand seems to be inadequate, to inflict imprisonment. They must remember that they are acting in the interests of the community. I think it is desirable may more, I think it is essential that Magistrates should be armed with powers greater than those they have at present — powers to inflict fines of a very much larger amount than rupees one thousand. If they are unable to do that and the Government are satisfied that the penalties inflicted are inadequate, they may bring the cases to this Court by way of revision or appeal (as I understand they are doing in other cases) and ask for enhancement, and this Court will not only support the Magistrate if they use their powers, but it will use such powers as it has to see that justice is done and that the evil which has grown up, is as far as is possible under the law, curbed if not stamped out.

I now proceed to deal with the cases which have come before us. The first is that of Joyram Pathak from Allpore. This man sold soft coke at Re 1/9¹ per maund when the controlled price was Re 1/6 per maund. He pleaded guilty and was sentenced to a fine of Rs 30 in default

one month's rigorous imprisonment. In my opinion that fine is inadequate. Although notice of enhancement has been served upon him he has not taken the trouble to come here to oppose it. Every one knows that there has been profiteering in coke. In my view the proposed sentence in this case is one of a fine of Rs 500 in default or rigorous imprisonment for three months. The sentence is altered accordingly.

In the case of Ram Chandra Goala, he, on April 9, 1943, sold a maund of coke for Re 1/9 instead of Re 1/6. He admitted the offence and was fined Rs 30. That fine, in my view, is inadequate and must be increased to one of Rs 500 in default rigorous imprisonment for three months.

The case of Kutai Shah is interesting. He was charged with a *breach* of the law under R. 81 (4) of the Defence of India Rules, in that on April 17, 1943, he sold three seers of *atta* at 10 annas per seer when the controlled price was 6/6 pies per seer. The prosecution gave evidence that the controlled price of *atta* at that time was 6/6 pies per seer. Kutai Shah admitted the offence and was convicted and fined Rs 60. The learned Standing Counsel who appeared on behalf of the Government pointed out to us that in April of this year *atta* was not controlled in price. It was not controlled until August, so that at the time of the sale there was no controlled price fixed by law. The position in fact was that Government in order to alleviate hardship was, through its own agents, selling *atta* at 6/6 pice seer, but there was no controlled price for all shops. It would appear that those responsible for the law against profiteering in this particular area had not been adequately instructed as to what the law was. The result is that the learned Standing Counsel agreed that this conviction must be quashed. Accordingly the conviction of and the sentences passed upon Kutai Shaw are set aside.

The next case is that of Jitu Marwari who was convicted by a Magistrate of Alipore for selling 2 1/2 seers of sugar for Re 1/9 annas on April 17, 1943 when the controlled price was 6/9 pies per seer. The accused admitted the offence and pleaded guilty. He was fined Rs 60. The sale price on this occasion exceeded the controlled price by more than 50 per cent. The offence is a serious one. In our opinion the sentence must be altered to one of a fine of Rs 500 in default rigorous imprisonment for three months.

The next case is that of Nani Gopal De. He was convicted by the Magistrate of Alipore under r. 121 read with r. 61(4) of the Defence of India Rules. His offence consisted in quoting the price of sugar as 8 annas per seer to a purchase at his shop when the controlled price was together with the paper packet 7 annas per seer. There was no sale but merely a quotation. The accused pleaded guilty and he was fined Rs 25. Rule 81 (4) provides:

If any person contravenes any order made under this rule, he shall be punished with imprisonment for a term which may extend to three years or with fine or with both

Rule 121 provides, and it is most important to notice the wording of it, as follows:

Any person who attempts to contravene, or abets, or attempts to abet, or does any act preparatory to, a contravention of, any of provisions of these rules or of any order made there under shall be deemed to have contravened that provision or, as the case may be, that order.

The result is that not only is it an offence against the anti-profiteering laws to sell at above the controlled price, but it is an offence to buy at above the controlled price. Moreover, it is an offence to quote a price above the controlled price or offer to sell above the controlled price and it is an offence to offer to buy at above the controlled price. That position should be noted by both dealers and the public. In this case this shopkeeper when asked the price

of sugar quoted 8 annas per seer. In so doing he broke r. 121 of the Defence of India Rules. Although no sale resulted, the quotation in itself was a breach of the law and it is important that breaches of the law of that kind should not go unpunished. Persons who have to buy the necessities of life very often have to send other people, sometimes children, sometimes servants with money and they are entitled to be supplied the goods at the controlled rates. If quotations are made above the controlled rates than the child or the servant may unwittingly pay money which ought not to be paid. It is necessary that rule should be enforced. The Magistrate sentenced the accused to a fine of Rs 25. In our opinion, that is inadequate and the fine must be altered to one of Rs 250 in default two months rigorous imprisonment.

The next case is that of Shi Charan Das Gupta who quoted — 11 annas as the price of a seer of sugar when the controlled price was 6/9 pies per seer without package. This again is a serious offence. The Magistrate fined him Rs 30. This accused, though he entered an appearance through an advocate, gave no further instruction to his Advocate and has not been present in court today. Perhaps he is of the opinion that the matter was of no consequence, but in that he is mistaken. He demanded a price of more than 50 per cent above the controlled price. That was an offence and he must learn that it is a serious offence. The sentence upon him is altered to one of a fine of Rs 1000 in default six months' rigorous imprisonment.

The next batch of cases is from the presidency Magistrate who dealt with these profiteering cases. The first one is the case of Makhan Lal Das, who was convicted for having on April 20, 1943, sold a seer sugar for — 8 annas against the controlled rate of 7 annas. He was sentenced to pay a fine of Rs 15. Here again the fine in our view is inadequate to offence which has been committed. The sentence is altered to a fine of Rs 250 in default two months' rigorous imprisonment.

The next case is that of Gopal Ch. Paul who was convicted of having sold a seer of sugar on April 23, 1943, for a price of 10 annas against the controlled price of 8 annas. He pleaded guilty and was sentenced to pay a fine of Rs 30. He appeared through Advocate before us and stated that he paid above the controlled price for his sugar, and accordingly sold above the controlled price. In fact he sold at 43 per cent over the controlled price. If that is so, he bought in the black-market and sold in the black-market. It was no excuse for selling in the black market that he bought in the black-market. It may be that his position like that of other dealers is an unfortunate one, but if he did pay more than the controlled price he could stop or help to stop by informing the officer of the Civil supply Department of the person from whom he bought and the price at which he bought. In that way the bigger dealer can be brought to justice and something done to stop this black-market traffic. In the same manner those responsible for the prosecution can take the cue from what has happened in this case and pursue their enquiries from such of the persons convicted as to from where they bought and the prices at which they bought and so bring the law-breakers, or at least some of them, to book. In our opinion the fine in this case should be one of Rs 500 in default three months' rigorous imprisonment.

The next case is that of Gangaram Kanu who sold coal on April 18, 1943 at the rate of Re 1/12 against the controlled rate of Re 1/6. He was fined Rs 30. In our opinion there is no excuse for this offence and the sentence must be altered to one of a fine of Rs 500 in default three month's rigorous imprisonment.

The next case is that of Kartic Singh who was a hawker apparently carrying all his goods. He quoted a price for kerosene oil at 4 annas for 20 oz., the controlled price being 3 annas for 22 oz. He was fined Rs 30. We see no reason to interfere with that sentence.

The next case is against Badri Nath Shah who on April 18, 1943 quoted Re 1/12 for a maund of coal against the controlled price of Re 1/6. He pleaded guilty. His story was that he bought at the rate of Re 1/6. He could have bought at the rate Re 1 which was the price of coal at that time in the sidings. He was fined Rs 20. In our opinion this sentence is inadequate and is altered to a fine of Rs 500 in default three months' rigorous imprisonment.

The next case is that of Nagendra Nath Nandi who sold on March 20, 1943, a bottle of kerosene oil for 5 annas instead of 3 annas. He was fined Rs 50 we think the proper sentence in this case is of Rs 100 in default one months rigorous imprisonment. We alter the sentence accordingly.

I wish, in addition, to add that it must not be considered that the only punishment for contraventions of the price-controlled orders is a fine – The 10th November, 1943.

Harold Derbyshire.
R.F. Lodge

Lodge J.

I agree

The 10th November, 1943

1. This is according to the Currency system that existed in India before decimalisation in 1957 – Ed.

True Copy

49: Motion regarding the food situation – Debate in the Central Legislative Assembly – November 1943

CLA Debates, Vol. IV, 1943

[NMML]

Mr President (The Honourable Sir Abdur Rahim): The house will now resume further consideration of the motion regarding food situation in India.

Lal Sham Lal: Now, Sir, We have a 'Grow More Food' campaign inaugurated for some time. As to this campaign the Honourable the present Food Member has made up a case and repeated the matter again. It is an admitted fact that this campaign has not so far made any improvements in food cultivation in any appreciable degree. I think it ought to have been like that. There are no cattle available for cultivation – the very means of cultivation. The average value of a bullock has gone seven times higher than normal. The daily wages of a plough have risen from Rs 1/8 to Rs 9/8 per day. Cultivation has gone beyond the means of an ordinary peasant. Sir, in my own part of the country I have seen myself women having been yoked to plough instead of bullocks while throwing seeds. During last session, Government were asked as to how many cattle were being slaughtered daily to supply beef to military, but they refused to declare the number of cattle slaughtered daily, on security reasons. If such is the state of affairs, how then is the cry for 'Grow More Food' going ever to succeed.

In case the few observations that I have made be found correct and agreeable, then with due respect to the seniority and high thinking of my colleagues here, I will say earnestly,

'Friends, do not waste any more time now. There is no use putting or indulging in questions and answers. The answers are not forthcoming satisfactorily; in many cases the information not supplied on grounds of public policy or on the grounds of security. There is no use harping upon one calamity or the other. The calamities must go on increasing under the circumstances that India is faced with today. If there is a calamity in one direction today, there will be another calamity in another direction tomorrow. It may be possible that the Government may apply some anodyne for your satisfaction to some afflictions, but that will only be a very temporary affair otherwise by way of reaction surely the misfortunes will grow stronger and stronger'. The whole fabric of the Government at the centre, it seems to me apparently has been unhinged. It is, therefore, necessary now to lose no time to bring this administration back to its centre. With the administration having been at the centre, I should say the administration in the provinces also has become unhinged. Therefore, to my mind, it is now necessary and in my considered opinion there is no way out except to have a popular national Government at the centre, a Government representing all shades of political opinion, a Government responsible to the people for the welfare of the country and a government over which the people of this country may have the fullest control. Therefore, I ask all my Honourable colleagues here to compose all their differences, to come to an amicable settlement. It is not expected that the Government will come to your aid or do anything which may bring about common understanding. It is now left for you alone to do it and to make a concerted demand for a popular and national Government pointed out by me. It is that popular and national Government alone that can solve all your difficulties, including the food crisis in the country today. As far as I think the political situation in the country requires that a joint and concerted demand should be made. Friends, you represent 400 millions of the people of this country. If you choose to make combined and concerted demand in order to save. Your country and your countrymen from further disasters then I do not think that your demand can be turned down in any case. Under these circumstances. I therefore suggest to my Honourable friends to cease making parties, to cease indulging in a tug of war for party strengthening and then composing all their differences through this Assembly, a determination be made that a national Government is the only need of the hour and this determination of yours may be carried to His Majesty's Government in England through His Excellency the Viceroy, and you will see how the situation of India is corrected in all directions, including the food situation. People are not affected by your parties at all. Mark you please, that many of your high thinkers are now doing penance for you behind the bars. Mark you please, that they are doing so that you may become capable to discern clearly what is needful for the good of your country. Your delays in the matter are reducing your country more and more.

Mr President (**The Honourable Sir Abdur Rahim**): All that is outside the scope of the motion before the House. The motion before the House is that the food situation of the country be considered. You cannot bring in all sorts of political constitutional matters.

Lala Sham Lal: Sir, the food situation is intimately connected with . . . Mr President (**The Honourable Sir Abdur Rahim**): There may be a remote connection.

Lala Sham Lal: All right; I bow to your ruling. Then if you cannot do this thing then of course nature will have its way; Kali's ways are mysterious and not always visible all at once. Nature will set things right in her own way of course nature will not care for your methods of remedying this situation by this device or that and quite unmindful of your bemoaning.

Mr President (**The Honourable Sir Abdur Rahim**): The Honourable member's time is up.

Lala Sham Lal: A couple of minutes more?

Mr President (The Honourable Sir Abdur Rahim): I cannot allow that.

There are a number of speakers yet to speak

I find that Mr Neogy has moved his amendment, but he has not made his speech: I think he had better make his speech now

Mr H.A. Sathar H. Essak Sait (West Coast and Nilgiris: Muhammadan): With regard to the other amendments, I suggest that they may be moved formally and the Members may take their chance later, so that all the amendments may be before the House

Mr President (The Honourable Sir Abdur Rahim): Yes that may be done

Mr Jamnadas M. Mehta (Bombay Central Division: Non-Muhammadan Rural) Sir, I move:

That to the motion the following be added at the end: and having done so this Assembly views with grave concern the tragic situation prevailing in Bengal and other parts of India and recommends to the Governor General in council to adopt immediately more vigorous and effective measures to cope with the situation including the stoppage of further inflation of currency; this Assembly further recommends to the Governor General in Council that a Committee consisting of fourteen with eight elected members of the Assembly, four elected members of the Council of State and one Accountant General with the Chief Justice of the Federal Court as Chairman be appointed to enquire into and report on the following points relating to the economic distress prevailing in the country:

- a) The causes of the present distress;
- b) The degree of effectiveness of the steps taken to prevent or remedy the situation with particular reference to the systems of procuration, transport and distribution of food grains as well as price control, that have been in operation from time to time;
- c) The suitability of the administrative organisation in charge of famine operations
- d) The adequacy or otherwise of the relief measures adopted by Government, specially in the light of experience of the management of previous famines in India and the actual results achieved so far in Bengal
- e) The accuracy or otherwise of mortality statistics and the effect of the present distress on mortality rates
- f) The steps to be taken to counteract or mitigate the effects of starvation and malnutrition upon the younger generation; and
- g) The measure to be taken to prevent a recurrence of the present trouble in any part of India

Mr President (The Honourable Sir Abdur Rahim): Amendment moved: That to the motion the following be added at the end: . . .

(Same as the above para — beginning That to the motion)

Govind V. Deshmukh (Nagpur division: Non-Muhammadan): Sir, I have an amendment to this which has been moved by Mr Jamnadas Mehta Sir, I move

'That in the amendment Mr Jamnadas Mehta for the words 'younger generation occurring in clause (f) word 'people' be substituted'.

Mr President (The Honourable Sir Abdur Rahim): But it has not been circulated to members

Mr Govind V. Deshmukh: I have given copies to the Whips of the Parties. I have

received notice of this amendment only on Saturday night. I have given notice exactly in time. I came here at 10.30 a.m. today.

Mr President (**The Honourable Sir Abdur Rahim**): But it has not been circulated to Members. If he had given notice on time, it would have been circulated.

Mr Govind V. Deshmukh: But it was circulated, Sir.

Mr President (**The Honourable Sir Abdur Rahim**): If the Honourable Member had taken the earliest opportunity to give notice to the office that he wished to move this amendment, it could have been circulated.

Mr Govind V. Deshmukh: I came to the office this morning at 10.30 a.m. and there was nobody, and at 10.35 a.m. I handed over the notice to Mr Robinson.

Mr President (**The Honourable Sir Abdur Rahim**): As it is a harmless sort of amendment, I think it might be moved. Very well. Amendment moved. 'That in the amendment by Mr Jamnadas M. Mehta for the words 'younger generation' occurring in clause (f) the word 'people' be substituted.'

Mr Kailash Bihari Lall (Bhagalpur, Purnea and the Santhal Parganas: Non-Muhamadan): Sir, I move:

That to the motion the following be added at the end:

'and having considered the appalling condition prevailing all over the country this Assembly recommends to the Governor General in Council to appoint a Committee consisting of the officials and non-officials to enquire into the matter with a view to regulate measures or guarding against the recurrence of such catastrophe in future and also with a view to the possibility of affording immediate and effective relief to the suffering people by adopting the following remedial measures:

- (a) opening of free gruel kitchens in the worst affected parts;
- (b) opening of public orphanages;
- (c) opening of poor houses and industrial factories attached thereto in important towns and stop beggary;
- (d) assuming of control over the public hotels meant for the proletariat class and regulating and fixing reasonable rates thereof;
- (e) centralizing the control of poor houses and industrial factories attached thereto and financing them from government money and funds from public charity; and
- (f) controlling all public and charitable funds and authorizing only responsible bodies to collect funds for the purpose.'

Mr President (**The Honourable Sir Abdur Rahim**): Amendment proved:

'That to the motion the follow. g be added at the end:

(same as the above para — beginning 'and having considered)

Mr Govind V. Deshmukh: Sir, I have got an amendment to Mr Kailash Bihari Lall's amendment that clause (f) of his amendment be omitted.

Mr President (**The Honourable Sir Abdur Rahim**): Order, order. The next amendment is in the name of Pandit Shambhudayal Misra. The first part of it wishes to indict Lord Linlithgow, Mr Amery and Sir John Herbert. He is apparently not aware that he cannot do anything like that under the rules and standing orders of this House. As regards the second part, that is evidently beyond the scope of the motion. I hold that this amendment is not in order.

Pandit Shambhudayal Misra (Central Provinces Hindu Division: Non-Muhamadan): May I be allowed to say a few words?

Mr President (**The Honourable Sir Abdur Rahim**): I have considered the matter and that is my ruling.

Pandit Shambhudayal Misra: That is only a recommendation . . .

Mr President (**The Honourable Sir Abdur Rahim**): Order, order.

Mr H.A. Sathar H. Essak Sait: I move: — That in the amendment moved by Sir Muhammad Yamin Khan after the words 'Royal Commission the following be inserted — composed of independent and impartial persons, majority of whom shall be Indians commanding the confidence of the people of India'.

Mr Govind V. Deshmukh: Sir, I have an amendment to this amendment. I move.

That in the proposed amendment by Mr H.A. Sathar H. Essak Sait and others to Sir Muhammad Yamin Khan's amendment for all the words beginning with the words composed of and ending with the words 'peoples of India' the following be substituted:

'Composed of elected members of the Assembly and the Council of State with a Judge of the Federal Court as Chairman'.

Mr President (**The Honourable Sir Abdur Rahim**): Amendment moved

(same as above — beginning 'That is the proposed . . .')

Mr K.C. Neogy (Dacca Division: Non-Muhammadan Rural): The calamity which has befallen my unfortunate province at the present moment is in a sense unparalleled in the history of human civilization. Starvation, death, pestilence have been known to follow in the wake of victorious tyrants overrunning foreign territory. In the present instance, however, this gigantic tragedy is being enacted while a well established Government is functioning in the country. If we consider the acts of omission and commission of which Government have been guilty in their attempt to prevent the outbreak of this famine or to deal with it adequately, we cannot help thinking that this famine is primarily a State Industry, and to my mind in certain of its aspects it bears the hall mark of a genuine British manufacture.

I recall with disappointment and sorrow the debate that took place in this House three months ago when we had the Honourable Sir Azizul Haque as the Member in charge of this Department. I say I recall that debate with disappointment and sorrow because on that occasion we tried to rouse the Government to the necessity of taking prompt action for the prevention of a tragedy that was fast overtaking my province. I remember with disappointment and sorrow the attitude that was taken up by Sir Azizul Haque as the mouthpiece of an incompetent and callous Government in parrying all our suggestions and questions seeking information about the actual state of affairs in the country. At that moment in a mood of frustration Sir Azizul Haque sought solace in Tagore's poetry. Lord Linlithgow was busy packing his trunks. A friend of the bovine species, he perhaps would have been more interested had it been a case of cattle epidemic in Bengal. Or was it because a sense of constitutional chastity prevented him from visiting Bengal in those days.

Mr President (**The Honourable Sir Abdur Rahim**): The Honourable Member knows that he cannot reflect on the conduct of the Governor General.

K.C. Neogy: But he is no longer the Governor General.

Mr President (**The Honourable Sir Abdur Rahim**): That makes no difference. It is the holder of the office.

K.C. Neogy: The plea has been raised that this famine has been aggravated, or at least

its treatment has been made difficult, because of the division of responsibility between the central Government and the provinces. It is a question of the policy of repression, somebody has got to press the button in New Delhi and the whole country can be set ablaze; and the policy that is enforced throughout India, irrespective of the existence of a ministry or not in any province, is carried out faithfully in every detail throughout the length and breadth of the country. This Government has specialized in the enforcement of law and order of the Maxwellian variety. If, however, it is a question of preserving human life and providing food for the people, well then comes the rub. Well, then let the Azizuls fight the Fazluls and the Srivastavas the Suhrawardies, so that our friends in England can establish beyond the shadow of a doubt the incapacity of all Indians for self-government.

Sir, the debates that took place recently in the Houses of Parliament have been a great eye opener to us. The official spokesman mentioned all the facts except the real ones, that could be held responsible for this unheard of famine. Mr Leopold Amery threw up his hands in holy horror, while contemplating the increase in India's population during the last census. I have in front of me certain statistics which I have taken some pains to study and from which I find that whereas during the last three centuries and odd the British population has increased more than 8 times, the Indian population has not increased more than 4 times. Moreover, if we were to take, say, about a period about 50 years prior to the last census, the increment in India is found to be about 39 per cent whereas the increment in the United States of America for that half century stood at 186 per cent, in Japan 74 per cent, Great Britain 54 per cent Italy 46.8 per cent, Switzerland 43.5 per cent, Germany 42.2 per cent as against India's 39 per cent. If we regard for a moment the progress of population in Great Britain and Wales, and if particularly we examine that census decade 1871 to 1881, during which Leopold Amery was vouchsafed to an expectant world to fulfil his Heaven-appointed mission of presiding over the India Office in his dotage, we find that the increase of population was 14.36 per cent in England and Wales. We are not aware that Mr Amery protested against this phenomenon either before or after his birth. Nor are we aware that England and Wales was swept by devastating famine as a consequence of this phenomenon. Sir, is it the case of the British Government that India is no longer in a position to maintain a larger population? If that be their case, let us examine it a little further. Two speakers in the Houses of Parliament pointed out the very low out turn per acre of foodgrains in India. I am not going to trouble the House with the percentages. Taking rice, I find that in the case of the province of Bengal, in regard to which we have the benefit of an authoritative commission, the Land Revenue Commission of 1940, which was presided over by Sir Francis Floud, it has been recorded that the out turn of paddy per acre has not progressed since the days of Emperor Akbar. If anything, it has gone down. Now, Sir, the Commission compares the yield in respect of rice of the various rice producing countries and points out particularly with references to Japan, that although in Japan where the same problems of over-population and uneconomic holdings exist the yield is at least three times as much as that of Bengal and in China it is more than double. I wonder if the British Government wants to take that as a credit and as a proof of the success of their trusteeship of India. Admittedly a very large proportion of the Indian population has always been in the margin of starvation. Indeed it has been pointed out by many writers in the past that very many thousands and hundreds of thousands of the people really live in a state of semi-starvation even in normal times. When therefore India got embroiled in a total war, was it not expected of our trustees to take some care to ensure a sufficient supply of foodstuffs for India's population? Mr Amery says that precautions were taken soon after the fall of Singapore.

I think Singapore fell about the middle of February 1942. Burma soil had already been invaded on the 9th December, and what were the precautions taken? The only constructive programme to which the Government can point in this connection is the starting of the 'Grow more food' campaign, which was inaugurated as 'early' as the 7th April, 1943. Burma soil having been invaded on the 9th December, that is to say about four months earlier. Moreover, what was the attitude of the Government of India in regard to the question of increasing the rice acreage in Bengal? Just before Burma was invaded, the Government of Bengal was persuaded by the Government of India to insist upon an enlarged acreage under jute in view of problematic orders from America and other parts of the world. In spite of the opposition of the representatives of Jute growers on a statutory body, the jute growers were compelled to undertake double the acreage of what they were prepared to agree to, and this insistence went on till the 24th March, when the Government of India permitted the Government of Bengal to order a reduction in view of the developments of the war. It had already become too late and there could be no remedy of the situation. The result was that the area under rice underwent a shrinkage. The area under rice in Bengal in the year 1942/43 was 7 lakhs of acres less than in the year 1941/42; and this decrease in the acreage has partly to be ascribed to this policy of the Central Government in encouraging a larger acreage under jute than the jute growers themselves wanted. Then, Sir, exports continued to the Mid-East and Africa; and it cannot be said that so far as the export policy is concerned, the Provincial Government had any say. Indeed, it is on record that the Ministers protested on more than one occasion against the policy of export in which the Government had indulged, but to no effect. The Government of Bengal really meant Sir John Herbert in those days — and the Ministers kept on protesting, but to no effect. In the Gregory Committee report a fantastic assumption has been made that the high prices of foodgrains really encouraged the producer to gorge themselves with food. A more fantastic suggestion cannot be made and its hollowness has been exposed in the note appended to that report by the present Minister of Agriculture for Bengal, where he points out that not more than 10 percent of the agricultural population, perhaps he was speaking exclusively of Bengal, could be said to have anything like any surplus. The rest either had to depend upon subsidiary occupations, because of the uneconomic sizes of their holdings, or they just barely maintained themselves with the produce of their fields. The Flood Commission also made a recommendation that a very large proportion of the cultivators really do not possess economic holdings. They pointed out that 29 per cent of the total population of Bengal represented landless agricultural labour, and that of the rest barely one-fifth has just sufficient land for maintenance. Two-fifths are cultivators of extremely small holdings. While these factors have been conveniently ignored by the Houses of Parliament, as also in this House by the Honourable Member in charge. An undue emphasis has been placed on hoarding. I entirely agree that hoarding has to a very large extent been responsible for the present famine, but hoarding on whose part? As pointed out by Minister of Agriculture in Bengal, not more than 10 per cent of the agriculturists could possibly be suspected of hoarding anything like, say, considerable amounts which could make any impression on the markets.

One of the factors which went to contribute towards this famine was referred in the House of Lords by Lord Huntington when he said that grain bought for the army and army reserves must also be a contributory cause. This has not been referred to by any other speaker. Now, Sir, a good deal of discussion has taken place in the report to indicate that, after all, the army feeds the Indians who otherwise have to be fed by the country and, although the army is expected to hold reserves the reserves are not at the present moment held up to the mark.

But Sir, there is one point which has got to be remembered in this connection. Though quantities do matter, it is not so much the quantities, as the simultaneous withdrawal of foodstuffs from the market by different competing parties that matter. In the present instance, the Government of India is responsible for very large purchases made on behalf of the Army, as well as considerable purchases made for the benefit of the civilian Departments, of which the Railways perhaps take the lead. It is admitted that all the Departments of the Government of India and all the Departments of the Government of Bengal, had to be supplied with rations at concession rates though the details of this privilege vary from Department to Department. In some cases, the entire families of the employees are entitled to be supplied with rations at concession rates. In other cases, perhaps the individual employees alone are so entitled. But, then, the fact remains that very large purchases had to be made by Government for the purpose of carrying out this obligation. That meant withdrawal of large quantities of grains from the market simultaneously with the purchases made on behalf of the Army. Add to this the demand made. . . .

Mr President (**The Honourable Sir Abdur Rahim**): Honourable Members time is up.

Dr P.N. Banerjea (Calcutta Suburbs: Non-Muhammadan Urban): It was agreed, Sir, the other day that the Movers of amendments would get 30 minutes.

Mr President (**The Honourable Sir Abdur Rahim**): I see the Honourable Member has moved an amendment. He can then speak for half an hour.

Mr K.C. Neogy: This fact is amply illustrated by a very recent publication on behalf of the Government of Bengal in which it is pointed out that from the 1st of March to 31st of August 1943 the total quantity of foodgrains received on Government account within the province itself, amounted to 65.3 lakhs of maunds. Out of this, these different Departments which enjoyed certain priorities, the industrial concerns, the essential services and so on, took away 22 lakhs of maunds, that is to say more than one third of the total quantity that was available to the Government of Bengal. The out-patches to the districts amounted to 16 1/2 lakhs of maunds. Is it then any matter of wonder that the distress was so acute and so tragic in its effects in the interior of the province? I find that only five days ago, a Dooars planter, evidently an honest Briton, writing to the Statesman said the following:

What is wanted is the restarting of a free movement of rice and paddy to local bazaars throughout Bengal. This will happen if large industrial concerns require again to lay down stocks to safeguard their labour and they will only be carrying on the vicious circle of bazaar. This must not be allowed to continue.

Sir, we had another honest Briton in the Council of State, Mr Parker, admitting that he had hoarded large stocks of food, though for the benefit of his employees. Hundreds of Parkers all over Bengal contributed to the misery of the population by restoring to this procedure for the purpose of safeguarding their own interests.

An Honourable Member: The others are not so honest as to confess.

Mr K.C. Neogy: I expect Sir Henry Richardson to get up and explain the part that was taken by his friends in this particular matter. Nowhere can such a thing be imagined. There was a mad rush for securing grains and it is referred to in the Gregory report as a scramble for supplies at ever increasing prices which they say had diminished supplies procurable. Who was responsible for this scramble? Let Sir Henry Richardson answer. Between Government and the employers of labour, those who are understood to be engaged in essential industries

(and the very touch of the white hand seems to endow any industry with the character of an essential industry), the scramble went on, and was to a very large extent responsible for the famine which we are discussing. What did the Central Government do? According to a statement made in this House, till 29th May 1943, there was no statutory authority given to the Provincial Governments to require employers of labour to submit returns of the stocks that they held for distribution to their employees nor to take out a licence for the maintenance of such stocks. Am I very wrong when I say that the Central Government is itself responsible for encouraging employers of labour in this murderous enterprise of theirs? At no time in the history of India the cleavage between the Government and the people had been brought out so clearly. Here was the Government supported by the capitalists whose needs must be satisfied at all costs, if necessary, at the sacrifice of humble lives. Nobody was there to enquire as to what was happening to the people — six crores of people in the Province of Bengal. This attitude was very forcibly expressed by a British executive officer in one of the Eastern Bengal districts when he pointed out that the life of a pack mule belonging to the military transport department was more valuable, and deserved to be preserved with greater care, than the life of people who were not helping in the war effort. That truly represented the attitude of a section of the permanent officials in this country, and that also led to the tragedy that we are witnessing today.

Sir I have very little time at my disposal to deal with the other points that came to my mind. Sir, the cup of my humiliation is full to the brim. I have under the rules of procedure of this House to work my amendment as a recommendation to those very people who, I think, are responsible for the misfortunes of my countrymen. But, Sir, I feel that I am pleading at the bar history — history that is not propaganda, history that is truthful, history that is fair and just to the weak and the oppressed, and I have no doubt about the verdict of that history.

Honourable Sir Jogendra Singh (Member for Education, Health and Lands) Sir, I as a Member of this very incompetent and callous Government, may say that I just paid a flying visit to some parts of Bengal. To speak with confidence concerning the rural conditions in Bengal would need a prolonged stay. I can give you only my passing impressions. I can claim that these impressions are not without some validity. I have been familiar with similar conditions elsewhere.

Bengal has been passing through a terrible ordeal of both body and mind. I have been asking myself the question: why Bengal suddenly found itself faced with famine? Bengal had managed to subsist for years and condition for all appearances were normal.

In 1933 General Megaw, after a careful enquiry into certain Public health aspects of village life in India struck a note of warning when he said:

'The outlook for the future is gloomy to a degree, not only for the masses of the people who must face an intensified struggle for bare subsistence, but also for the upper classes whose incomes depend on the production of a surplus crop.

Taking India as a whole, he said that 39 per cent. of the people were well-nourished 41 per cent. poorly nourished and 20 per cent. very badly nourished.

An Honourable Member: What is the distinction between poorly nourished and badly nourished.

Honourable Sir Jogendra Singh: I suppose 'poorly nourished' means under nourished and 'badly nourished' means not properly nourished at all. It was said in 1933 and the conditions have not greatly changed since that was written. That fact is that India has been

suffering from chronic poverty. Even in normal times, Bengal produces only 19.6 ounces grain per adult against 24 ounces per adult estimated to be the minimum nutritional requirement. The position in Bengal was aggravated by the shortage of rice harvest in 1942 owing to damage by cyclone and insect pests. The situation in the provinces was not made easier by an attempt to bring the laws of supply and demand which act sub-consciously under conscious control and the provinces which suddenly sprang up impeding normal streams of supply. The corn dealers who carry stocks in normal times, faced with the uncertainties of a controlled market, now carry no stocks. Villages were emptied of supplies and the landless agricultural labour was stranded. The village drudge trudged to the towns in the hope of getting some food. The towns had neither the reserves nor the organisation to meet the situation. The precariously balanced economy of Bengal was thus put out of gear by factors over which the Province lost control. New problems arose which could not be readily resolved.

The impression I formed was that the clouds are lifting. Since about a month ago grain from outside Bengal is now not only flowing into Calcutta but into the remote towns in a steady stream. The charities organised by people in Calcutta and outside towns have done a great deal to succour and to save. At Dacca I found a voluntary organisation at work which has much to commend itself. The citizens of Dacca of all communities have formed a central food committee. This central food committee has formed mohalla committees. The authorities hand over foodstuffs as they become available to the central food committee and this committee distributes to mohallas and committee who in their turn distribute it to their consumers. The central committee charges a small commission for the supplies it gives to the mohalla committees for retail sale. Out of this profit it runs free kitchens which feed a few thousands. It has also started cheap canteens which have become very popular. These cheap canteens provide four chapatis, dal and vegetables for one anna. I tried these myself and found them good.

Then a rich harvest of rice would soon be ready for the scythe. Those who are ready to work will find their way into the rice fields and those who are too weak to work and the orphans will need care and nursing for some time to come. Indeed orphans will need care and protections for many years till they grow up. I would however, remind the House that this 26 million acres of early and late rice give less than half an acre per head on 60 million people of Bengal. The normal yield of acre in Bengal is about 1,000 pounds only. This is the grim fact of this situation and till food production can be increased to meet all the demands, the situation would remain just as it was in 1933. It will go to normal but that normal does not mean that the population is getting what it should get — a good standard of living.

Thanks to the Honourable the Finance Member we have not been idle. Our 'Grow More Food' campaign has succeeded during 1942-43 in increasing the area under food crops by 80 lakh acres and our target during the current year is to increase it to 120 lakh acres. Up to 15th October, 1943 we have given financial assistance amounting to 133 lakhs in loans, over 61 lakh as grants from the Central revenues and nearly 16 1/2 lakhs from the cotton fund — I am glad to say that 62 lakhs in loans and 13 lakhs in grants have gone to Bengal. This financial assistance has been sanctioned for initiating various schemes which are expected to produce quick results. Among irrigation schemes two schemes of irrigation by tube-wells have been sanctioned one, for 200 tube-wells in U.P. and another for 73 tube-wells in Bihar which should command an area of 60,000 acres in U.P. and 22,800 acres on Bihar respectively. These areas have been diverted from cash crops to food crops and would revert to cash crops as the cultivator is losing over the change. The cultivator must be assured of a square deal if we want to ensure the success of the 'Grow More Food' campaign and have consumer goods

available to meet the needs of himself and of his family. There is no ground for a complacent attitude. The disease of poverty and under-production is of long standing. It will need consistent effort continued for long years to improve conditions.

I am a new comer to this House. I wonder if this House has ever taken any abiding interest in the report in the Royal Commission on Agriculture. Sir John Russell's admirable recommendations. Dr Wright's report on Animal Husbandry and the Banking Inquiry Committee's report which gave estimate of agricultural debt. The need of the moment is to take a warning from the present, to plan for increasing production for the future, providing employment for surplus village population and to raise generally the living standards of the agricultural product as well as urban labour. Planning requires grasping of the complex conditions from a number of key positions from which a complete design can be produced.

The problem may be placed under four heads: Land, Economics, Social, Political.

Land improvement implies the lightening of the burden of debt which agriculturists carry, to bring the land tax within the modern canons of taxation to provide cheap agricultural credit, a knowledge of better seeds and the method of improved animal husbandry, of co-operation and of farming generally. It needs bringing science to the help of the villagers, to extend the responsibility of our colleges and universities beyond their academic walls to fields and farms.

Economics imply provision of money for developing new lands, to convert barren areas in to fruitful fields by irrigation, to cover areas that lie waste with grass and trees, to raise the price of agricultural produce which determines agricultural wage, so that our vast population may have some purchasing power creating a new demand for goods and services leading to expansion of industries to provide employment for our population which remains unproductive.

On the social side it needs programme for rural and urban reconstructions, training for applying modern scientific discoveries. In the words of a poet, our fleet footed friends have captured the *Mahmal*, while we sit spell-bound by the piping of the piper of the caravan. The force of human engine has been assessed at 2,000 kilogram calories per capita per day, while science in countries which are now in the forefront has increased the capacity per day to 1½ lakh kilograms per capita per day. The lag in scientific technique will have to be made up if we are to take our place with the other countries of the world.

Some planning on the agricultural side was carried out in the Punjab and it is as a result of this that the Punjab is able to provide a surplus for other provinces and has made an unrivalled contribution in men, money and material and her wheat has found its way not only to Bengal but to many war fronts and at rates which compare favourably with the prices of other food-grains. The Punjab has made the interest of the producers its paramount concern and has been rewarded by the contentment of the countryside even these fateful days.

You may well ask, what is the policy and programme of my department? It is true that I am in command of Education, Health and Lands, but it is none the less true that my command does not wield the sceptre of authority. Agriculture, Education and Health are primarily the concern of the provinces. Indeed it seems to have become a tradition, nay, it is the constitutional position that beyond offering occasional advice the Centre has no direct responsibility in these fruitful fields. I must confess that I am not satisfied with this. If India is to resolve the economic deadlock it must have centralized direction, centralized finance and decentralised activities. I feel that unless we at the Centre guide the emergent forces which are racing in full blast in all countries of the world, we would fail entirely in advancing the economic interests of this vast continent. Society cannot be rationed as a factory. It can only live pooling its resources,

by financing boldly agriculture and industry and by harmonizing collective and individual cultures, sub-consciously, acting as if bound by social contact, to promote and protect, with common force, the goods of each associate. The strategy of the future must aim at production of food and goods. We are worried about the increased circulation of money. We ought to worry some more about increasing the production of goods. I have deliberately dwelt on conditions which govern life and labour. We must apply our minds to the problems of the chronic disease of poverty which is haunting our villages and towns. Of enquiries, reports and recommendations there was no end. What we need is action. Our discussions bear no fruit and will be gone with the wind unless we plan boldly and carry out the plans with courage to make a better future for the generations to come. Mr Churchill has given the lead. Let us resolve to provide food, work and homes for all.

Pandit Lakshmi Kanta Maitra (Presidency Division: Non-Muhammadan Rural): Not for us.

The Honourable Sir Jogendra Singh: The battle of land and the battle against poverty should be fought now and continued till victory is won (Interruption). I can assure you that this Government is resolved now to fight poverty and to raise the standard of living both in the villages and towns.

Dr R.N. Banerjee: Good sense is dawning on this Government now.

The Honourable Sir Jogendra Singh: I call 'this Government' it is largely Indianised and is resolved to do its best.

Sir Cowasjee Jehangir (Bombay City: Non-Muhammadan Urban): May I ask the Honourable Member what is the production for 1942-43 from his 'Grow More Food' campaign?

The Honourable Sir Jogendra Singh: Three and a half million tons.

Mr Abdul Qaiyum (North-West Frontier Province: General): May I know whom does the Honourable Member represent? Nobody. Please do not lecture to us about your representative character.

Mr President (**The Honourable Sir Abdur Rahim**): Order, order.

Mr Jamnadas M. Mehta: Sir, I have already moved the amendment which stood in my name, and I shall presently explain why my amendment should be carried. In the meantime I wish to express my satisfactions that at long last the Government have come to a right conclusion and have accepted a really right food policy. It has been a very belated performance, but at last they have reached a really right policy to get over this food crisis . . .

Pandit Lakshmi Kanta Maitra: What is that?

Mr Jamnadas M. Mehta: What it embodied in the Gregory Committee Report which the Honourable Member has accepted on behalf of the Government, which recommends statutory control of prices, vigorous drive against profiteers, no matter who they are, and so on. I am very glad that that policy has at last been accepted and even now — even at this late hour — if it is honestly pursued without any but or if, it will relieve the unfortunate distress that has been stalking the land for nearly two years. (Interruption) I only say 'no reference to the immediate present or immediate future in my Honourable friend Sir Jogendra Singh's speech. He has been talking to us of a beautiful future vision when the standard of life will be raised and he has his poetic dream of something which is yet to come.

Pandit Lakshmi Kanta Maitra: From the corpses of the dead.

Mr Jamnadas M. Mehta: For the present I am not concerned with that dream but I am concerned with the terrible realities . . .

Dr G.V. Deshmukh (Bombay City: Non-Muhammadan Urban): But he is concerned with his four chapatis.

Mr Jamnadas M. Mehta: The drift of policy about which I will use the mildest word that the Government has been guilty of criminal neglect. It is the mildest word that I can use. The mildest words which I can use for the policy of the Government for the last four years are 'criminal negligence': and ever more 'criminal self-complacency'. But I am not indulging in recriminations. I am more concerned with the immediate future and I assure Government that it is because I want to help them that I am saying all this. The problem is too tragic. The situation does not admit of these personal bickerings, but of the promptest and the quickest remedy vigorously pursued. I am not quite sure whether the Government are still going to pursue the policy which they have announced. If they do, we shall even now forget what has happened in the past. Dreary processions of one Food Member after another, one Food Member comes and one goes, experts come, committees come, reports come. Pompous promises were made on the floor of this House by General Wood, Admiral Steel, Air Marshal Iron, but nothing is done to relieve the poor people who are dying.

I want something real from day to day, from moment to movement. But still my Honourable friends on the Treasury benches want us to sympathize with their difficulties and not to redress the difficulties of 40 crores of people. They have no apology for the past; they are still telling us that they have done their best when the whole world says that they could not have done worse. Let them keep this in mind that if they were in a free country, all those Honourable Members will be driven into an exile from which they will not return until their next birth . .

An honourable Member: It is fiction.

Mr Jamnadas M. Mehta: But what do I find the Indian Members to be? They are simply departmental heads. I am shocked that not one single Indian Member has raised his voice against the policy of the last four years of deplorable self complacency and criminal negligence. Indian Members of the Executive Council must act like members of a Cabinet, and not departmental heads. The past Food policy shows that they simply attended to their departments, did their best, made their mild protests in the Executive Council and left everything to those who control the policy.

Honourable Member: Question.

Mr Jamnadas M. Mehta: That is unfortunately the impression that I have got. I have tried in all places wherever my voice was heard. In fact, I asked one Food Member to get me the food or to get out. I said, 'get out'. I don't think there is any milder word for you who have starved 40 crores of people and who are still complacent and who want us to appreciate only your difficulties. What is the difficulty that you know about? 40 crores of people going without food, thousands of people forming queues at food shops. And then because they have some kind of rationing in Bombay, there is no end of boosting this Bombay rationing. Remember that in Bombay the solution achieved is only of distribution and of nothing else. It is a mistake to boost Bombay. I come from Bombay and I know the conditions there. It is of course right to compliment the Government of Bombay and their officers who have done their very best for distribution, but don't think you have much to envy us in the matter of prices and unless the problem is solved both ways distribution and prices, there is no meaning even in rationing in Bombay. I tell you that the prices in Bombay today are what black market prices were this time last year; and the food is often adulterated with dust and stone, and we have to pay for mud at wheat prices. That is the position in Bombay. You have read of rats gnawing at the dead body of a woman, not merely in Bengal where it is so

common, but in Bombay which has been boosted out of all proportion everywhere, even in the House of Commons. I say as a Bombay man that what they have solved is the distribution question; the prices question remains absolutely unsolved. Therefore I ask the Government that they should not have any complacency about this matter; they should pursue with vigour the measures they have initiated with courage and persistence, and they should not care for anybody who comes in the way. If the Punjab zamindars come in the way, they must be taught their places; if the Government of Sind is profiteering at the expense of the starving masses, that Government must be pulled down. . . .

Mr Lalchand Navalrai (Sind: Non-Muhammadan Rural): Under the orders of the central Government.

Mr Jamnadas M. Mehta: Yes there are ample powers; they have not been used. I asked for a food dictator months ago. What do I see now? The Sind Government making a profit of 2 crores or even some say 3 crores — I received a letter yesterday only — a gentleman who was a highly placed Government servant but who has now retired says it is three crores; and this Government to whom I am paying a subsidy for the last 8 years of one crore and 5 lakhs a year, this Sind Government which is living on my charity for the last 8 years to the extent of one crore and five lakhs a year and which is going to live on my charity for another forty years because of this Sukkur barrage, this Government has the ingratitude, the inhumanity of starving my people unless they pay these fancy prices for what stuff it exports to Bombay and to other places. What mercy are you going to show them? You are not touching the Punjab zamindars or the Sind Government. My friend Dr Sir Zia Uddin Ahmad mentioned in his speech the other day that 95 per cent. of the people of the Punjab are against this policy of the zamindars; and I am glad to find that his voice has been echoed in the *Tribune* which condemns without reservation this complacency of the Punjab Government and their incipient revolt against the policy of control. I say, control them properly; shackle them if need be; force them to behave properly.

But unless the Government are also clear that the real causes of this misery are also attacked, they will only land themselves in a blind alley. That real cause is inflation. Let Government remember what they have done during the last four years. That inflation is at the bottom, and it is the biggest and the most essential and the most decisive cause of the present crisis. It was early in 1942 that my humble voice was raised at a public meeting over which I was presiding, that inflation was not coming in the future — it had already come. Thereafter Professor Vakil followed with a series of lectures against inflation. Then there is the *Economist* of London, one of the best known financial papers — I cannot help reading what the *Economist* has to say about the policy of this Government; it calls it 'crude inflationary finance'. That is not enough it goes further and condemns them roundly. I could not condemn them as effectively as the editor of the *Economist* has done; but unfortunately my Honourable friend, the Finance Member, does not still lay the same emphasis on inflation as he should. First he ridiculed and pooh-poohed it; then he employed hirelings to write in favour of his policy. These hirelings were writing in April that wheat is flowing into Bengal. They are being picked up from some native state, one of them a foreigner, to write in support of his inflationary policy. The Honourable the Finance Member did everything in his power to confuse the issue by talking of workers — in their thousands — getting high wages and about their 'fictitious' purchasing power; but it never occurred to him that it is the inflationary policy which is the decisive and the real cause of this great catastrophe prevalent in the country. In my humble way, I tried work out what in terms of human misery this country had suffered as a result of his policy;

it caused me many sleepless hours and when I reached my conclusions. I tell you that I could not get sleep till 3 a.m. After such patient labour presented him some statistics the other day and asked him to correct me if I was wrong, or he could give his own figures. What did he do? With incredible levity, which cannot be excused, he began by pouring ridicule on the statistics of the miseries of the poor of this country. Let him come out with his own reasoning: otherwise for a finance minister of this country to pour ridicule over the miseries of hundred millions of people worked out in statistics is to my mind a performance which nobody will envy him. I am willing to be corrected but I maintain that after careful consideration I reached a figure 50,000 crores of goods and services — for a margin of error I, reduced this to 18,000. That shows how moderate a man I am. but instead of studying those figures my friend went on ridiculing them. That complacency must go.

I would also request the honourable the commerce Member not to be so full of optimism as he is, he is a fighter like me; I like a man who fights and therefore I like his fighting figure whenever he comes and speaks to us: but let him fight on the side of right. Let him not fight as an official. Let me tell him that when 2,700 million yards of cloth were found to be hoarded, the hoarders were not punished for profiteering or hoarding but they were given three months more time to rob the poor; and he wants me to thank him for it and say that he will not follow me. He need not follow me. I do not expect him to do so; but I ask of him to remember the two ladies in Bengal who went to buy cloth — saris — for Rs 4, the pre-war price, and were told they had to pay Rs 14 and then went home and committed suicide. I want him to remember those sisters of his and mine, of whom there must be many who are suffering today on account of his 'success' of his control of prices of cloth.

Regarding the control of prices, I want to say that will be the crux of the whole question. The only Member of Government, who was not a Food Member in that time, who can claim credit for having initiated a right policy is the Honourable Sir Ramaswami Mudaliar. Late in 1941 it was he who wanted to fix the price at Rs 4-8-0 a maund of wheat; but he did not get the support of his own Executive Councillors; and then things have run riot until wheat can not be had even for Rs 15 sometimes or Rs 12 a maund and even worse. If his policy had been adhered to in 1941 we could never have come to this unfortunate crisis.

There is one other point on which I want to say how sad I am that in this country at this very critical time my own countrymen have played a most discreditable part. The zamindars and capitalists have bled, starved and fleeced their own countrymen with a callousness and soullessness which make me feel that there is nothing glorious in 'Nationalism'. The Punjab starves Bengal.

Sardar Mangal Singh (East Punjab: Sikh): Question.

The Honourable Sir Jogendra Singh: Question

Sardar Mangal Singh: I will give you figures.

Mr Jamnadas M. Mehta: You can give them in your own time. It is admitted now, my friend — the Punjab starves Bengal.

The Honourable Sir Jogendra Singh: Admitted by whom?

(Interruption by Sardar Mangal Singh.)

Mr Jamnadas M. Mehta: You can say in your own time. I am simply — saying that this is the information on which I am speaking.

Maulana Zafar Ali Khan (East Central Punjab: Muhammadan): They have done more to Bengal than any other province.

Mr Jamnadas M. Mehta: If you go on in that style, I will expose you further

(Interruption) I say, you can have your say when you have time. I maintain that the Landlords of the Punjab have become the greatest parasites.

An Honourable Member: It is a lie.

Sardar Mangal Singh: It is a white lie.

An Honourable Member: It is a black lie.

Mr Jamnadas M. Mehta: No doubt you have given wheat for money. I won't pursue this, but this shows the difficulties of the Honourable the Food Member — what forces he has to meet.

The Honourable Dewan Bahadur Sir A. Ramaswami Mudaliar (Supply Member): Hear, hear.

Mr Jamnadas M. Mehta: This shows that even in his own Executive Council, a just and humane, man — my Honourable friend, Sir Jogendra Singh — a quiet man, a recluse and a philosopher — he thinks that the Punjab has played a noble part. History will speak but I am sad that my own countrymen are playing an ignoble part. When the existence of inflation was admitted by 20 eminent economists, these capitalists in Delhi and Bombay were talking of commodity inflation and all that bunkum. I am sorry they could get hireling writers who call themselves economists, to re-echo that absolute bunkum. Mr Pethick Lawrence is as great an economist as any Liberal or Tory statesman, and our own 20 brilliant economists who are not hirelings of any capitalists have said with the greatest emphasis what wrong inflation has done. But what did our big merchants do? They say, there is no inflation, let us get more profit. And they are responsible for getting bloated wealth in their pockets by starving, bleeding and even killing the masses of this country. It is not merely the Government that are responsible. I acquit Government of any deliberate desire to starve. Where they have failed is that they have not got at the right policy; it is not intentional. But as for the zamindars and the capitalists, there is the intentional policy of making as much money as they can out of the miseries of the people of this country. Therefore, my indignation against these profiteers, even though they are my own countrymen, is ten times greater than my indignation against this Government. I find the press in India, to a large extent only attacks this problem politically and condemns the Government's food policy on political grounds. If the press had real sympathy for the starving people they would have stormed the houses of these capitalists and profiteers. I do not find any condemnation of the profiteers or hoarders. The Government behaved as if the capitalists are their spiritual brethren, the press also behave as if the capitalists were their spiritual brethren, and as between the Government and the press the profiteer has got the paradise to-day. I want that public opinion should awake up. The pressmen — these poor fellows — they write what their proprietors force them to do. They know that this is wrong, but they write what is called this wretched belly. They write what they do not believe in. They tell me, I can produce them if their job is certain for the rest of their life. I can produce them here and make them swear God's own truth that it is these proprietors who are compelling them to write such nonsense when the profiteers and the hoarders are there. But unfortunately for the masses there is no friend. This condemnation of the Government's food policy in the press, so long as it does not condemn and ferret out the profiteer and the hoarder is purely political, and I attach no importance to it because it is not sincere. But at the same time, the condemnation is true, and the Government must not forget that for a moment.

Lastly, I will say, I do not want to go into the bickerings about the past, I am prepared to forget them. I want that the Government with the co-operation of this House which the Honourable Member has sought, with such conciliatory spirit in his speech — I am sorry that

his speech is ridiculed on political grounds, the contents of it are not appreciated. The contents of that speech are exactly on the lines of the Gregory Committee's report and if he does not pursue that policy I will blame him. But the policy which the Gregory Committee announced and which he has accepted, which the Government has accepted I say, is correct, and if anybody ridicules you he is an enemy as much of yours as of the masses. It is not an easy thing for you to pursue that policy. In your own Council there may be people who may be against you. The Provincial Governments may be against you. The reputation of the Civil Service is against you, the infallibility of the foreign bureaucracy is against you, the lethargy of the human nature is against you. There are many other things which are against you, and in the meantime, 40 crores of people do not know where they get their next meal and three crores of children are growing without any milk. It is an ignoble thing that our younger generation should grow without milk. Milk is getting scarcer every day, and my friend pictures a vision of the future in which we shall have an idyllic state of things, when to-day all we see is devastation, desolation starvation, nudity and death! Let my Honourable friend apply his mind, let the Government apply their mind to the present situation. The future will take care of itself. I am not concerned with the future now; I am concerned with the present. And unless they do so the Indian Members of the Government will go down in history as simply puppets who stuck to their jobs. In face of inflationary finance by the Government, in face of an absolute complacency on the part of the higher powers they must stand out. If they all combine and tell the powers that be, 'Look here, no Indian shall starve', things will not be like this. In the Taj Mahal Hotel in Bombay you can have your seven courses. Nobody prevents — who prevents it? What do I find on the Bombay race course? Bookmakers and gentlemen in their thousands get whatever refreshments they want, though they may not want any. They are simply drowning their sorrows in a cup of tea. That is what they do. Why do Government carry on races now? If one thing should be made illegal to-day it is racing. But they enjoy themselves. Life goes on merrily in India from the bureaucratic point of view as if there was no wars and starvation, no destitution. I only wish that the drive which His Excellency the Viceroy has undertaken — for which all credit to him will not be a shortlived thing, because I cannot imagine a greater hurdle against him — his own Government — which does not know its own mind from one day to another. I absolve them from all deliberateness, I do not absolve them from negligence and carelessness, and I blame them for their absolute failure, and I only wish that they now retrieve with vigour and courage, a policy, a course of conduct which has brought us to this pass. Otherwise, India without having been invaded, will present a picture far more ghastly than even Poland, Yugoslavia and other invaded countries. Do you find anything more gruesome, has it ever occurred — 200, 500, 600, 1,000 people struggling with dogs and mice for a morsel of food from the dustbins, mothers abandoning children, husbands abandoning their wives, the whole social fabric breaking down, and you sit down here in your complacency and ask me to give you credit! I ask you to understand the difficulties of the people, and unless you want to conceal the folly and stupidity of the last four years they should agree to my amendment. I do not want Royal Commissions. Since the Simon Commission, I have lost all inferiority complex. I do not want any Royal Commission any more. I want the elected representatives of the people, people who are in daily touch with the lives which people live, elected from the members of this House and the next. (An Honourable Member: How many reports do you want?) This will be the report of the people. Unless you are interested in starving the people you will join me and if I am interested in not starving the people, I shall join you. I assure you that to me the poorest Indian, of whatever caste or creed, has always been and will always be my next-of-kin. Therefore I

assure you that I shall report as justly as it may be, if I am elected, of which I am not sure But what I want is ten elected people. Then there is the Federal court Chief Justice who is the biggest judicial authority, who will impartially go into the situation and give us a report. I do not want scapegoats. I do not want to hang anybody, just as they threaten to hang Hitler when he meets them next. All that I want is that responsibility should be shown where it is and people who have starved the masses for four years should no longer live with a reputation for infallibility which they have always cloaked their failures with. That is the reason why I am asking for the Chief Justice of the Federal Court. He is a man whose impartiality nobody can doubt. His capacity cannot be doubted and of these 12 elected members, these 12 apostles, if they apply their honest minds guided by an Accountant General and the Chief Justice of the Federal court, we need not fear the verdict of that body. They will enquire, not with a view to find scapegoats but solely with a view to lay the responsibility where it is to seek guidance for the future.

Sir I have done. I implore my Honourable friends on the Government Benches to forgive me if I have spoken a strong word. I ask every other Honourable Member to forgive me if I have spoken a strong word. I want, just as anyone else in this country, that this war should be won but you are losing the war by pursuing the policy which you have done, by the complacency that you have shown. You have thrown us to the wolves of hunger which are much worse than the Japs or the Germans. For the cloth that I am wearing today I used to pay 12 annas or 14 annas per yard in pre-war days. After my friend Sir Azizul Huque inaugurated his policy of cheapness, I have paid Rs 3.12

The Honourable Sir M. Azizul Huque (Commerce Member): Why don't you purchase cloth at 10 annas, which is still available.

Mr President (**The Honourable Sir Abdur Rahim**): The Honourable Member has only one minute.

Mr Jamnadas M. Mehta: I am finishing. I say this is the position which has got to be retrieved. I commend my amendment to the House.

Sardar Mangal Singh: We are debating the food-problem under the shadow of a great national catastrophe. Thousands and thousands of our countrymen are dying of starvation. Here is a Government of India which sits complacently and I am sorry that the speeches from the Treasury Benches do not come up to the requirements of the situation. I heard with attention the speech of the Honourable the Food Member the other day but I must say that his speech was disappointing. While he showered compliments on his colleagues to his left and to his right, especially to the Honourable the Railway Member, there was nothing which could be called a constructive contribution to the solution of the acute food problem that is now before the country. He sits there with the privileges of an accused person denying the charges that are brought forward against him but he does not make any statement himself. When he is asked what are the starvation figures of deaths in Bengal, he says that the Bengal Government does not know. When he is asked what are the production figures he does not know anything. When he is asked what foundation there is for the statements made by the Secretary of State in the British Parliament about the Indian food situation, he says he does not know. He has not even read the White Paper issued by the British Government and then he says that the British Government might have learnt the facts from sources other than the Government of India. I put a question the other day as to what foundation there is for statement made in the British Parliament that the Punjab zamindars are withholding foodgrains from Bengal. He confessed his complete ignorance. He says he did not know what was the foundation

for those statements. I asked again what was the foundation for other fantastic statements made by Mr Amery the other day in the British Parliament. He could not say anything. The Government of India is groping in the dark. They do not know their own mind. They have no reliable data before them.

When they feel puzzled, they send a telegram to Mr Amery:

'Please send one more expert.' The expert comes here. He juggles with his figures. He produces a report. The Government does not know what to do. These experts from Britain are trained in the methods of price control in Britain. England is a small country with a highly educated people. They have got their own national governments in which they have complete confidence. The conditions in England are entirely different from the conditions in this country. This is a country of 400 millions, the great majority of whom are illiterate. It is a big agricultural country where the sources of food cannot be controlled. In England you can control either, at the factory or at the port. In India, you cannot control the foodgrains which are produced all over the country. Unless you can control the commodity you want to requisition, you cannot introduce price control. If you introduce price control, the moment the Ordinance is issued from the Secretariat, that commodity will disappear from the markets. Under the very nose of the Government of India, gur disappeared from the market of Delhi last year, as soon as the Ordinance was issued. The next day when it was withdrawn, gur came on the markets of Delhi again. What is the position of cloth control in this country. Mr Jamnadas Mehta has not said a word about the soaring prices of cloth from Bombay. He was very unjust to the Punjab zamindars. I am very much against profiteering and hoarding. Profiteers and hoarders must be punished along with the Members of the Government of India. My Honourable friend said that the present Indian Members of the Government should be sent to exile. Why should they not be tried for murder and sentenced to starvation to death. That would be the most appropriate punishment. My point is that if you want to issue orders about price control, you must be sure that you can enforce them. What is the guarantee? Last year, when you introduced price control in the Punjab, you fixed the price of wheat at Rs 5 per maund. Where was the wheat? Even the Government Department, the Military Department purchased wheat in the Punjab at Rs 7 or Rs 8 a maund instead of Rs 5. The Military Department entered into the black market, they were forced to do so. Where is the guarantee for the price control all over the country for which Mr Jamnadas Mehta pleaded. He might have read some books on price control printed in England and he wants to force those theories on this country, the conditions of which are entirely different. I submit that so far as the Punjab is concerned, there seems to be a misapprehension over the country.

In the British Parliament also statements have been made which are obviously based upon wrong telegrams which are being sent weekly by my Honourable friend, the Food Member. What is the position? I agree with Mr Jamnadas Mehta when he says that hoarders and profiteers must be punished. I support him in that statement. But the question is who are the hoarders and who are profiteers?

Mr Jamnadas M. Mehta: The Government knows that.

Sardar Mangal Singh: Government knows nothing. I would like to know whether the Punjab zamindar is a hoarder or a profiteer.

Mr Jamnadas M. Mehta: *The Tribune* says that he is.

Sardar Mangal Singh: *The Tribune* man is from Madras and he writes something for his belly and how can you rely on his statements? Now, what are the figures? In this wheat year the arrivals in the Punjab Mandis of wheat are 425,700 tons as — compared with 371,000

tons last year. Now, what are the Government purchases? In May 1943, the Punjab agents purchased on behalf of the Government of India 195,000 tons of wheat. How much of it was transported? I would invite the attention of this Honourable House to study these figures. The Punjab Government purchased nearly two lakhs of tons of wheat for Bengal. How much of it was transported to Bengal? Only 16,000 tons. The remaining wheat 180,000 tons, remained undespached and it was lying in different godowns and on different railway platforms. I challenge the Honourable the Railway Member to prove that these figures are wrong. My Honourable friend the Food Member complimented the Railway Member for the quick despatch of foodgrains to Bengal. But what is the Punjab story and what happened in the month of June?

The Honourable Sir Edward Benthall (Member for Railways and War Transport): So, it is a story?

Sardar Mangal Singh: It is a right story; it is not a fiction.

Mr Jamnadas M. Mehta: What about Sir Chhotu Ram?

Sardar Mangal Singh: I am coming to him. Now, Sir, in May the Punjab Government purchased about 2 lakhs of tons of wheat and only 16,000 tons of it was sent to Bengal. Now, what happened in June? In June the Punjab Government purchased 42,000 tons and only 67,000 tons were despatched at the end of June, 158,000 tons remained undespached. At the end of July 141,000 tons of wheat remained undespached at the stations. Again, at the end of September there remained 63,000 tons of wheat still undespached from the railway stations of the Punjab. Now, Sir, may I ask the Honourable the Food Member and the Honourable the Railway Member who is withholding the grains from Bengal. Whether it is the Punjab Government or the Railway Member himself or the Government of India who are withholding this grain? I may inform the Honourable Railway Member why he does not get the wagons. All the Departments of the Government of India from top to bottom are thoroughly corrupt. My Honourable friend cannot get the wagons whereas the ordinary trader can get the wagons from the Railways. Why? Because there is no one on behalf of the Railway Member to pay the tip to the railway Babu. The real difficulty is this. If you send someone to tip the Babu; you will get the railway wagon. But if you issue instructions, nobody will care for them. The railway Babu will care for his tips.

The Honourable Sir Edward Benthall: May I ask the Honourable Member where the wheat he talks about is now?

Sardar Mangal Singh: It is still lying on the platforms of railway stations and in the godowns.

The Honourable Sir Edward Benthall: May I inform the Honourable Member that all this wheat has been moved to Bengal?

Sardar Mangal Singh: The Government of India has obviously awakened now.

This being the position, I would inform my Honourable friend Mr Jamnadas Mehta that the Punjab zamindar is neither hoarding nor profiteering. That he is not hoarding, I have proved. And he is not profiteering.

Now, what is the position? The Punjab grower sells wheat at roundabout Rs 10 per maund. Sometimes he may sell 4 annas this way or that way. Now, what was the price of atta and wheat in Bengal? When you purchased wheat at Rs 10-4 per maund from the Punjab, the atta was being sold at Rs 20 per maund in Bengal.

I am quoting the official price; I am not quoting the black market price. May I ask the Honourable the Food Member or my Honourable friends of the European Group why there

is so much difference in the price. There is a difference of about Rs 10 per maund. The railway freight is only Rs 1-6. Including the overhead charges, the price of atta should not be more than Rs 14 per maund in Bengal.

An Honourable Member: Not even that.

Sardar Mangal Singh: Yes, not even that. May I ask who is profiteering somewhere? Who is taking away this Rs 10 per maund because neither the Bengal consumer is being benefited nor the Punjab grower?

Mr Jamnadas M. Mehta: Quite clearly, it is the Punjab zamindar.

Sardar Mangal Singh: How?

Mr Jamnadas M. Mehta: Let us argue this point outside.

Sardar Mangal Singh: Why not argue it out here?

Mr Jamnadas M. Mehta: I do not want to fight with you here. I shall do so outside.

Sardar Mangal Singh: May I ask when the Punjab grower was selling the wheat at a lower price than United Provinces zamindar by Rs 3 a maund who was the profiteer? It was either the European miller or the Bengal Government or even the Government of India. I charge here the Government of India that they had been making profit at the expense of the Punjab grower. I charge the Bengal Government that they had been making profit at the expense of the Punjab grower. I charge the European millers in Calcutta that they had been making profits at the expense of the Bengal consumer and the Punjab grower. Why don't you catch these people?

Mr Jamnadas M. Mehta: I agree with you about the profiteer.

Sardar Mangal Singh: Thank you. Now Sir, I leave the profiteers and consumers and growers. What is the position in the country? My Honourable friends have given notice of amendments asking for a Royal Commission and Committees. I would beg of them not to fall in the trap because this Royal Commission is a trap. What will be the report of this Royal Commission. The first recommendation would be that the transfer of power to Indians was a mistake. That, I am sure, would be the first recommendation. The second recommendation would be that they will condemn Indianisation. They will say: 'Look here, the Bengal civilian was sitting back in his chair not sure of the support of the Ministry in his actions.' That would be the line of the recommendations of the Royal Commission. I beg of the Secretary of the Muslim League Party and my Honourable friend the Leader of the Nationalist Party to drop the proposal of the Royal Commission. We do not want committees. We had plenty of them. We do not want experts. We want food straightaway here and now. That is the question before the House. If you cannot give food, the only other way is that my friends on Treasury Benches should get out and make room for others who can handle the situation properly. You have failed and you will go down in history — those Indian Members especially will go down in history as people who let down their country at a critical time. That would be the verdict of history. You may shake your head or you may not shake your head, but that would be the verdict of history.

What are the causes. Government are issuing Ordinances, creating black markets and all those things. That is no solution. The real problem is that this country has a vast population and this vast population has no confidence in the present Government. That is the reason why orders issued by the Government are not carried out even by the Government servants. There is corruption all along under the very nose of Government of India. It is impossible to remove it with the present policy of the Government of India. You will fail, because during the last century and a half of the British rule, you have encouraged all undesirable elements

in the public life of the country. That is the real crux of the problem. You have suppressed desirable and better elements in the country. You have encouraged only those people who have no self respect and who regard themselves as very inferior people. So, Sir, this is the result. There may be direct causes for the Bengal famine, such as no rice from Burma, cyclone, etc., but the real cause is the long exploitation of the masses by the British Government. You have reduced the masses to bare starvation and they cannot put up any power of resistance when the calamity comes. The British Government is really the culprit, they are really responsible for this famine. God knows next year how many other Provinces may be caught in the grip of famine. If you want to earnestly settle this question the only possible solution is to take the leaders of the country into confidence get their help and I am sure if Mahatma Gandhi and Mr Jinnah put their heads together, these two leaders can deliver the goods and they can solve all question.

Mr Jamnadas M. Mehta: Question.

Sardar Mangal Singh: You may question. But if the Government of India refuse the co-operation of the people, if the Government of India treat with contempt the offers of co-operation of the people of India in fighting the Axis countries, then the responsibility for this muddle, political as well as famine muddle will be solely on the shoulders of the British Government. I would beg of my Honourable friends the elected Members of this House not to be caught in any trap, but come to a straightforward decision and let the Government of India be held responsible. If the Government of India really seek co-operation of the people, I am sure this food problem — which is not a political problem — can be solved and the leaders of the country will be willing to offer their hand of co-operation for solving this problem and thus save our dying countrymen.

The Assembly then adjourned for Lunch till Half Past Two of the Clock.

The Assembly re-assembled after Lunch at Half Past Two of the Clock, Deputy President (**Mr Akhil Chandra Datta**) in the chair

Sir Abdur Ghuznavi (Dacca cum Mymensingh: Muhammadan Rural):

Sir, before I proceed to fix the responsibility for this man-made famine I should like to give a reply to my Honourable friend Sir Jogendra Singh. He is not here now but I wanted him to hear this. I represent the Dacca-cum-Mymensingh constituency in this House. When he was giving us his experiences of Dacca the four chapatis that he had in one of these cheap canteens that Government run there, he forgot that that canteen merely is not all that the Dacca people want. You cannot get rice in Dacca for even Rs 200 a maund even now rice is not available in Dacca town and the Dacca district even at Rs 80 a maund. And my Honourable friend said that everything is O.K. that rice was flowing in and he saw an abundance of rice in Dacca. My constituency will take me to task if I do not enter a protest against what he said about the situation in Dacca.

Mr J.D. Tyson (Secretary, Department of Education, Health and Lands): Sir, with due respect, the Honourable Member said that foodgrains were flowing in from other provinces, not rice.

Sir Abdur Ghuznavi: My Honourable friend perhaps did not hear him. He distinctly said that it was his experience that foodgrains included rice. I do not know if the Honourable Member wants to differentiate between rice and wheat. I am speaking about the rice famine.

Sir, the responsibility for this man-made famine in Bengal rests, firstly, in Sir John Herbert for the manner in which he carried out the denial policy in April 1942 and secondly, with Lord Linlithgow's Government for not taking any steps whatsoever to prevent food shortage

which was inevitable owing to enormous military purchases and continued exports of rice from India. After the declaration of war in 1939, more particularly after the fall of Malaya and Burma when the rice position became critical, nothing was done even then and lastly, after the creation of the Department of Food on the 2nd December 1942 the department had no Member for three critical months commencing from the resignation of Mr Sircar. Chaos prevailed in that department in the three months and Secretaries were making wild statements. Major -General Wood made a statement in Bengal that rice would be flowing in within a month and the month he mentioned was April, 1943. He again made a statement at the Federation of Indian Chambers of Commerce that every arrangement had been made to see that there was no shortage of foodstuff in the deficit provinces. Now, Sir, Lord Linlithgow's Government did not take a census of the food position nor did they ever endeavour to get accurate statistics of the food position in the provinces.

The Bengal trouble started with an unfortunate denial policy, rice removal policy. Sir John Herbert ignoring his ministry ordered the Joint Secretary of the Commerce Department to remove the surplus rice within a fortnight from three surplus districts in Bengal. When he got enraged he ordered the Joint Secretary to remove the rice within 24 hours. The removal of rice from these surplus districts coupled with the removal of the boats and the other means of conveyance like bicycles, etc., was responsible for the complete loss of confidence in the Government and was further accentuated by reports from evacuees from Burma and Malaya when they described their experiences of a like nature. All these led to a complete breakdown of the trade channel and the rural economy of the areas immediately concerned and also of the other areas when this news began to spread. It must be said to the credit of Mr Fazlul Huq that in a letter addressed to the Governor on the 2nd August, 1942, he made this picture absolutely clear to him. In that historic letter he, with the courage of his convictions, told the Governor,

'There is first of all the case of your mandate to the Joint Secretary in April last in the matter of the removal policy. In a matter of such vital importance effecting the question of food stuffs of the people, you should have called an emergent meeting of the Cabinet and discussed with your Ministers the best means of carrying out the wishes of the military authorities and of the Central Government, but you did nothing of the kind. The Joint Secretary says that when he was arranging to carry out your orders, you grew impatient and gave him definite directions to arrange for the removal of excess rice from 3 districts within 24 hours. The result has been a dismal failure so far as this particular policy is concerned.

He then says:

At the present moment (Aug., 1942) we are faced with the rice famine in Bengal mainly in consequence of an uncalled for interference on your part, and of hasty action on the part of the Joint Secretary.

He further proceeds:

Then I come to the boat removal policy. The most outstanding instance of blunder which has been committed by the permanent officials . . . (not the ministry), apparently with your knowledge and concurrence, has been the case of the prevention of boats from going out into the Bay of Bengal for the purpose of cultivation of the lands in the various islands lying at the mouth of the Delta.

That was another blunder on the part of the Governor: To destroy boats which used to do all the sowing of rice in those islands. And then as a result of destruction of these boats there was fuel wood shortage. 4 million tons of fuel wood used to be carried by these boats and that was denied to Bengal. People had to depend on coal only; no fuel was available.

The military authorities intended that the boats may not fall into the enemy, but here instead of keeping them away from the hands of the enemy by removing them to a safe distance, he destroyed thousands and thousands of boats. And those were the boats which used to go into the islands for sowing rice and other things and which used to carry fuel wood. That is the reason why we are facing famine in Bengal.

Sir, speaking on the food debate on the 9th August 1943. My Honourable friend, Sir Azizul Haque referred to the food Conference which was held the 14th December, 1942. He was not the Member then; Sir, N.R. Sarkar was the Member. He quoted from the proceedings of that conference, and incidentally I may say that not a single copy of the proceedings of that conference has been placed in the Library so far.

Dr P.N. Banerjea: The Honourable the Food Member assured us that he would endeavour to make a copy available to us.

Mr R.H. Hutchings (Secretary, Food department): Sir, copies are being made. The proceedings were never printed; there are no printed copies available. So I was under the unfortunate necessity of having them typed out and cyclostyled or of sending the proceedings to Simla to be printed. I hope they will be available very shortly.

Dr P.N. Banerjea: After the food debate is over.

Mr R.H. Hutchings: As soon as I can get them.

Sir Abdul Halim Ghuznavi: My honourable friend, the Commerce Member quoted the following from those proceedings:

'The rice position was therefore discussed by the Conference, and this Conference was attended among others not only by the official representatives of the Government of Bengal but also by the then Chief Minister of the Province, namely Mr Fazlul Haq. As regards rice the statement on behalf of Bengal was as follows (I have got this quotation from the proceedings of the Assembly debates. He said that Mr Fazlul Haq stated):

'We do not require for the next few months any rice even though we are in deficit.'

That is the line he quotes from his speech, but he does not quote the second sentence which I have got from Mr Fazlul Haq. He said:

'Provided you do not export any rice from Bengal and provided you give us sufficient wheat for our consumption. And it is then alone that I shall be able to pull through for the next few months.'

What is the sin that he has committed if he said that. You did not stop your exports, and you did not give us the wheat that you promised to do, and that is the reason of the famine. Why do you hold Mr Fazlul Haq responsible for this situation?

Then Sir, bear in mind that he said this on the 14th of December 1942. How could he realize then about the denial policy which was later carried out by Sir John Herbert – removal of excess rice from those districts.

Syed Ghualm Bhik Nairang (East Punjab: Muhammadan): Was it after December?

Sir Abdul Halim Ghuznavi: It was in April 1943.

An Honourable Member: No, that is wrong.

Pandit Nilakantha Das (Orissa Division: Non-Muhammadan): Who is blaming Mr Fazlul Haq? Why should he be defended?

Sir Abdul Halim Ghuznavi: I am not defending him at all.

Then Sir, my Honourable friend, Sir Azizul Huque, referred to the frantic telegram of Mr Fazlul Huq. He said:

'I am at least happy that he (Mr Fazlul Haq), has become frantic to send the telegram now

I ask my Honourable friend to find out, when did Mr Fazlul Haq realize I should not have used his name — when did the late Chief Minister of Bengal realize that there was famine condition in Bengal in 1942? Was it in August, 1942, as my friend says today? Will he get an answer from him as to why is it that in January, 1943, when the Government of India wrote to the Government of Bengal that there was a great shortage for civilian consumption?

The Government of India wrote to the Government of Bengal — shortage of civilian consumption; shortage of potatoes, shortage of onions, shortage of cabbages, shortage of cauliflowers. Is this an answer? When did this arise? It did not arise in August 1942. The letter to the Governor is clear on that point; but all this blame is foisted on him for shortage of other things, the civil food supply shortage.'

Now my Honourable friend Sir Azizul Huque has said so much about him;

Now let me quote Sir Azizul Huque himself. What did he say in Krishnagar in May 1943

Mr Deputy President (**Akhil Chandra Datta**): The Honourable Member's time is up

Sir Abdul Halim Ghuznavi: I shall conclude in two minutes. Sir Azizul Huque, the Commerce Member of the Government of India in reply to the address of welcome by the Krishnagar municipality stressed the absolute accuracy of the figures recently published by Government regarding rice, and maintained that Bengal was not yet deficit in rice. Not content with saying that, he continues; he strongly hoped that there would be a substantial reduction in the price of rice within a week. The week commenced from the 15th May; and he asked the people to muster hope and courage and should not panicky and despair. This is what he said in May 1943 — that abundance of rice will be available and the market will go down. But what happened? The price of rice in May was 18 rupees and it is forty rupees a maund today and even at that price it is not available in Dacca.

Mr Deputy President (**Mr Akhil Chandra Datta**): The Honourable Member will conclude his speech now.

Sir Abdul Halim Ghuznavi: I will now come to the last page. The Honourable Members here invariably tell us that we criticise and that we never make any constructive suggestions. That is the grievance. They say 'Give us the constructive suggestions and see whether we carry them out or not.' I gave you a constructive suggestion but you did not carry it out; I give you a constructive suggestion today and I shall wait and see whether you carry it out or not: You, Sir, in your speech on behalf of the Bengal people gave a constructive suggestion: I have read that again today; if those constructive suggestions which you gave to this House and to the Member in charge had been carried out this present famine condition would not have prevailed in Bengal. I have no time to read them out, but I will ask the Honourable the Food Member to whom I must say we Bengalis are grateful for taking up the food question and going to Bengal the following day as soon as possible to visit and see the Bengal position for himself — we have no grievance against you, but we have this grievance that as you are the Member for Food, will you please read page 550 of the Assembly Debates — the constructive suggestion which the Deputy President had given the House which, if you will carry it out, will save suffering Bengal. I shall give the substance.

Mr Deputy President (**Mr Akhil Chandra Datta**): The Honourable Member must conclude now.

Sir Abdul Halim Ghuznavi: I will not take more than a minute. The remedy is this, that food grains for Calcutta, Howrah and other industrial areas should be made available from imports from abroad and from other surplus provinces, and the Government of India should be responsible for such supplies. This is my first suggestion. . . .

Mr Deputy President (**Mr Akhil Chandra Datta**): I am afraid the Honourable Member must stop now.

Sir Abdul Halim Ghuznavi: Half a minute only, Sir. The distribution should be taken out from the hands of the Provincial Government and should be made and adjusted through the military authorities or the Government of India. The Aman crop — that is our danger. The Aman crop should not be disturbed as far as practicable, so that it may circulate freely through the normal trade channels and feed the people of the district towns and the rural areas.

Hajee Chowdhury Muhammad Ismail Khan (Burdwan and Presidency Divisions: Muhammadan Rural): Sir, it has been said that the present famine in India is a man-made famine. I agree. But the question is who are those men that made this famine?

An Honourable Member: With the permission of the Chair, he may come down nearer and speak.

(The Honourable Member moved down to the front bench and continued his speech.)

Hajee Chowdhury Muhammad Ismail Khan: Who are those that by their acts of omission and commission have caused the deaths of hundreds of thousands of their fellow men? The object of this Motion is to find out those guilty and expose them to the gaze of the world, to the contempt and condemnation of the world.

Attempts have been made in England and in this country to lay the blame for this food crisis at the doors of provincial autonomy. The British die-hards clutched at this as an argument and as excuse for the perpetuation of British rule in India. They say, 'Self-Government in the provinces has resulted in this huge toll of lives. Full self-government would mean that Indians would kill themselves off in record time.' Now, Sir, whatever may be the faults of Indians whatever may be their shortcomings, who can deny that the responsibility for this man-made famine ultimately rests with the British Government and their agents in India? It is no argument at all to say, that there are only a few handful of Britishers in India. All the key posts are held by Britishers and it is sheer brazen faced opportunism to make scapegoats of Indian self-government. If the Indian ministries went wrong, why did not governors intervene and stop rot? If the Governors went wrong, why did not the Governor General pull them up? And if the Government of India went wrong, what did the Secretary of State do? It is because Indian lives are involved in this crisis all the responsible people went to sleep without lifting their little finger to save the lives of these unfortunate Indians.

Now Sir, let me turn to the scene in India itself? The Government of India is said to have a majority of Indian Members. How have these Indian Members discharged their duty to their countrymen? Some months ago when the life of a single man was at stake, three Indian Members vanished from the Government Benches.¹ But now, hundreds of thousands of their own people are dying of forced starvation, and when the whole country is stunned by the groans of the dying and the dead, our Indian Members are sitting opposite cool as cucumbers! What have they done in terms of achievement to justify their calling themselves the Government of the country? So far as I can see, they have only brought about the deaths of countless numbers of their own countrymen. Their delay of two years in setting up even a Food Department is a crime of the very first order. Having set up the Food Department, they went on from one blunder to another. They tried to feed the country by statistics and Mr N.R. Sarkar declared that the food position in the country was statistically sound, that there was only 4 per cent shortage. Did the Government even then realise that these unfortunate 4 per cent meant hundred per cent starvation and death? When the Government introduced the control

price for wheat the small stocks that were available promptly disappeared. People clamoured for food but the Government gave them wood — Major General Wood. This gentlemen withdrew price control and embarked on some experiments of his own. The disastrous effects of his introduction of trade in the eastern zone are too well known to need repetition. Markets became chaotic and prices soared high. Major General Wood also dallied in statistics and declared that far from there being any shortage in Bengal, there was actually a surplus of 285,000 tons. But independent calculations which took account of exports and also the cessation of imports conclusively established that the deficit was in the region of 1,813,000 tons.

When the theory of 'no shortage' was thus exploded, Government then resorted to another explanation. They blamed the poor peasant for hoarding. Big posters were put up calling upon the people to outcast the hoarder. An anti-hoarding drive was ushered in with a fanfare of trumpets, but no drive was undertaken against the Government itself which was the biggest hoarder and the biggest purchaser, reckless of price. In spite of loud warnings from the public, the Government merrily allowed exports overseas. From the outbreak of war right down to July 1943, it was the declared policy of the Government of India for export food to Ceylon, to the Indian troops fighting abroad and also to the Middle-East and other Empire countries. The part played by the United Kingdom Commercial Corporation in depleting the country not only of its food resources but also of other consumption goods cannot be overlooked in this connection. The activities of the U.K.C.C. have been sought to be made public by questions put in this House but the Government have not placed full information yet before us about this Corporation. But according to the chairman of the U.K.C.C. himself, it was the prompt shipments of Indian wheat that spared Persia the horrors of famine early in 1941. I am not against India giving help to other countries. But I want the House to imagine what this huge export trade carried on by U.K.C.C. meant in terms of self-denial to this country. And, yet, in this grave peril for Indians all over the country, where is the U.K.C.C.? Could not the U.K.C.C. use its immense influence with the British Government and secure shipping space for the transport of grain from Africa, America, and Australia?

What did the Government of India do here? The 'Grow More Food' campaign was inaugurated and agricultural exhibitions were held. The virtues of tomatoes and cauliflowers were much advertised. But what can the poor illiterate peasant do who has not got the wherewithal to keep body and soul together? Even the Royal Commission on Agriculture admitted that the standard of fertility was of a very low standard. In rice, the Indian average is 750 to 900 lbs., per acre as compared to America's 1,500 lbs., Egypt's 2,000 lbs., Japan's 2,300 lbs. and Italy's 3,000 lbs. I ask, Sir, whether the Government have got any clear policy at all in this matter of cultivation?

It was said in the House of Commons recently that the famine in India today is merely one of famine in money and not in grains. The price of food grains has reached a point which is beyond the reach of the masses. In the words of the London Economist, India has reached the crudest inflationary finance.

Now, turning to my own Province, Bengal, it is the worst sufferer now. My own district of Barisal has been known to be the granary of Bengal, and yet the misery of the people knows no bounds. Thousands of them have already died of starvation. More are dying every day. The tragedy started with the 'Denial Policy' that led to the removal of rice from many parts of my district and it was heightened by the confiscation of boats used by the people for reaching their fields and carrying their paddy.

Later, a reckless policy was followed at the instance of Government for large scale purchase

of local stock at unreasonably high prices. Rice was selling formerly at Rs 5 a maund and it has now reached Rs 60 a maund, and at this rate too it is not obtainable. The Government agents are giving advance to cultivators for aman crops. The cultivators are helpless and they have to give up the crops for fear of being forfeited on some pretext or another. It is high time that the Government put a stop to this disastrous policy. So far as my district is concerned, I must pay my thanks to the Muslim Chamber of Commerce which has been doing much useful work in giving relief to the distressed people there. The Chamber has opened free kitchens for distribution of gruel and milk to the distressed.

As regards the other parts of Bengal, the distress is equally pitiable. The prices of food grains have risen in some places to 1,000 per cent. The price of pulses has gone up. The diet of the ordinary man has become starchy and unbalanced. At this rate, I am afraid it will devitalize the coming generation of the people. When people here are suffering, exports are brought out from abroad on high salaries. After thousands have paid with their lives a report is brought out by Sir Theodore Gregory. The net result of the recommendation of this report will be a multiplication of the ranks of the Bureaucratic army. My complaint against our economic experts is that they have not drawn the attention of their employers in good time to the great catastrophe to which we were heading. As long ago as 1933, the then Director General of the Indian Medical Service gave a warning which went unheeded. The population has been increasing at the rate of 5 millions a year, but the area under cultivation has been stationary for the past many years. According to the best authority our food production has been falling short by 12 per cent. Have the economic experts pondered over these ominous facts and have they warned the Government? If not, they have failed in their duty.

The object of this amendment is to institute an enquiry and to bring to light these and other correlated matters. Who have failed and why have they failed? Who were responsible for allowing the crisis to develop? Who permitted the foodstuffs to be exported? Who were at the back of the U.K.C.C., which denuded this country of its foodstuffs? Why was it that both price control and free trade failed? Have not the Government themselves violated their own control orders by giving secret instructions to their purchasing agents to purchase articles at more than the control rates? On Saturday last, in answer to a supplementary question put by my Honourable friend, Mr Neogy, the Food Member admitted that there were attempts on the part of some purchasing agents to give more than local ruling price for rice. Who were the authors of that unheard of policy of denying foodstuffs and also boats from whole districts and yet not removing the people to other districts where foodstuffs could be had. What has become of the huge quantities of rice that were removed? Have they been exported or destroyed? The Honourable Sir Azizul Huque gave numerous instances during the last session of determined obstruction to the Central Government policy. Who are those responsible for this policy? I can go on multiplying questions by the hundreds which have all to be investigated by an impartial body and satisfactory answers arrived at.

In conclusion, I wish to say that I support the demand for the enquiry so that the perpetrators of the dark deeds may be dragged into full light of day, so that they may serve as an example and a warning to all such polemical heroes in this land and elsewhere, so that they may be outcast from civilization and from humanity. The other day an Honourable Member remarked that even congenital idiots could not have mismanaged the affairs in a worse way. We, Sir may tolerate fools, but we cannot tolerate knaves.

Before I conclude, I must ask the Government to be careful about the aman crop. The future of Bengal depends mainly on this crop. If it is mishandled by the Government, if it is

captured and cornered by them, then there is no hope for Bengal. The Government must not purchase this aman crop but leave it to the trade with some safeguards. They must feed Calcutta from the imports of food grains from other provinces and from overseas, and by Calcutta I mean also its neighbouring industrial areas. The whole of the aman crop should be made available to the rest of the province outside Calcutta through the ordinary trade channels. If the people of Bengal are yet to get a chance to survive, they must be allowed to draw upon this aman crop without any interference from the Government.

Mr Sami Venkatachalam Chetty (Madras: Indian Commerce): I move: that at the end of the motion the following be added . . .

Mr Deputy President (Mr Akhil Chandra Datta): Is it an amendment that the Honourable Member is moving?

Mr Sami Venkatachalam Chetty: Yes, Sir.

Mr Deputy President (Mr Akhil Chandra Datta): When was notice given

Mr Sami Venkatachalam Chetty: It was given only this morning.

Mr Deputy President (Mr Akhil Chandra Datta): Then the Honourable member had better not move it.

Mr Sami Venkatachalam Chetty: Then I can make a speech on the main motion and the amendments before the House.

Mr Deputy President (Mr Akhil Chandra Datta): Certainly, the Honourable Member can.

Mr Sami Venkatachalam Chetty: After hearing the two long speeches of the Honourable Members of the Food Department successively and after reading the report of the Food Department on the food situation, I am astonished at the limited and narrow view they have taken on the whole about the engulfing problem of widespread starvation not only in Bengal but in other parts of the country as well. Too much stress seems to have been laid on the Bengal famine or Bengal starvation because of the wide publicity given lately to Bengal in the Press and on the platform, while similar things are occurring in some parts of Southern India, that the Madras Province, and particularly in the States of Travancore and Cochin, not to speak of Malabar. If the situation is as has been described by the Government communiques and the speeches of Honourable Members of the Government and they have to be taken as the correct diagnosis of the existing situation, it is this that India is normally a deficit country in food grains, that the deficiency has hitherto been met by imports from Burma, that on the outbreak of hostilities with Japan we lost about a million and a half tons of rice that should have come to India. Added to this deficit, there was the necessity of export of some limited quantity of food grains to countries outside India for the purpose of the defence services and we had also to supply some quantity of rice for the Indian population in Ceylon and therefore it was that the acuteness of the shortage of food grains has come to be felt in several parts of India. According to their own estimate, this has resulted in a deficit of 2 million tons of food grains as against a normal production of 52 million tons of food grains. The shortage works out to, more or less, 4 per cent of the total population. That is all the deficit during this year. It is difficult to believe that this small deficit of 4 per cent would alone have created the havoc which we are witnessing in all parts of the country. It is therefore a very narrow view to take to say that the shortage of food grains alone was responsible for the devastating starvation that is going all around us. There must be other causes which have to be looked into and have been deliberately passed over.

So far as Bengal is concerned, even if we base our arguments on the limited sphere which

the Honourable the Food Member has conveniently taken to be the cause of the famine, enough has been said of the way in which the whole thing has been bungled from the very beginning. It is said that there were large purchases on behalf of the Military, on behalf of the big industrialists and by the profiteers, the railway employees and so on and so forth. Those who hoarded stocks of foodgrains for the purpose of feeding their workers have been criticised rather out of proportion. I should have thought there was enough justification for the industrialists and big employers of labour to be forewarned of the possible acute shortage of foodgrains in their province and to stock reasonable quantities for the purpose of feeding the workers and the labourers employed by them, especially as they had no assurance from the Local Government that steps would be taken to bring in supplies, to regulate supplies and to ensure a continuous supply of rice and foodgrains; but if in their anxiety for self-preservation they had exceeded the reasonable limits of shortage of foodgrains, surely they were as blameworthy as any other private person who hoarded stocks of foodgrains for the purpose of making more money. The fact seems to be that these persons have exceeded reasonable limits under the auspices of the local Government and hoarded large stocks of foodgrains at the expense of the common man and later on when the Government realized that the man in the street is not able to get his food articles, they did not take any steps to de-hoard stocks from these persons. As has been stated on the floor of the House, there was neither any action taken by the Local Government nor there was any direction from the Central Government to the Provincial Government to find out exactly what were the stock balances in the hands of these industrialists or big employers or the profiteers. Surely, it cannot be said that this Government or the Bengal Government was so weak or so inefficient and so unworthy of the trust placed in them by the people that they would not be able to unearth the stocks of these grains. (An Honourable Member: they were not able to do it in Madras'.) They were and there is no hoarding there. Latterly what happened was. There was more fight between the ministry and the Government and bickering between the Central Government and the Provincial Government over foodgrains in that part of the country. It is impossible to conceive that in a city like Calcutta there should be people dying of starvation from day to day in scores, if not in hundreds. All this cannot be explained away by saying that it was due to the four per cent shortage of foodgrains, that is apparent from the statistics supplied by the Government themselves. Therefore the reason must be something else than this mere shortage. In the steps that are proposed to be taken either in the shape of recommendations of the Food Policy Committee or in the Resolutions of the Government on those recommendations, I do not see any solution offered for the immediate tackling of this perplexing predicament. They seem to be going on in the same old groove of facilitating despatch of supplies to deficit areas and their distribution. A million and 40 thousand tons of foodgrains have gone to Bengal they say and yet I have heard one of the representatives from Bengal saying that even this quantity is not available to the ordinary man and that even this quantity is finding its way into holes. I suppose there are many Black Holes in Calcutta besides the one we have read of. Now, Sir, what steps the Government have taken to see that the supplies which they are inducing the Honourable Member for Railways to send are actually reaching the consumer? The inactivity and hesitation are visible in one of the sentences of this report which reads that rationing in Calcutta is a gigantic affair. Well, Sir, when this statement is made, I can understand the efficiency and the ability of this Government. I should be understand the ability, the intelligence and the cleverness of the Government and the Government Member if they should consider rationing in the city of Calcutta to be a gigantic affair. May I say that the city of

Madras which has perhaps less abler men than those sitting on the Treasury Benches here has been able to effect it. And Madras is not a mean city. It has got a population of 11 lakhs of people; probably Calcutta has got a population of two millions of people.

The Honourable Sir Jwala Prasad Srivastava (Food Member): Greater Calcutta has a population of four millions.

Mr Sami Venkatachelam Chetty: Even if the population is four millions, it is not an impossible task to ration out what stuff you are getting into Calcutta. I can understand that there would be some difficulty with regard to the villages and the rural parts even though they also have got to be managed somehow. If, however, you are unable to manage, then take the whole of this House into your confidence and convert the present Session of the House into a Committee. We will be able to offer our suggestions and we will ourselves go to Calcutta at our expense to see that the rationing is done properly. If the Government is of the opinion that rationing alone is the possible and sensible solution for ensuring equal supplies of rice and other commodities to the people, then it ought to be resorted to in as early a time possible.

Now, Sir, one thing that strikes me in the enumeration of deaths which are occurring not only in Calcutta but in other parts of the country is this that all these deaths are taking place only amongst the poorer classes and the destitute. If the shortage of foodgrains was really a reason, why should I not see some middle class and richer people dying? I, therefore, conclude, apart from other reasons, that it is more the lack of purchasing power that is responsible for so many deaths in that city and elsewhere.

Now, how does this lack of purchasing power come in? We have got enough money. In fact, our currency has increased from 299 crores to 780 crores. Economists were clamouring that we are having lot of money. The Honourable the Finance Member came to our rescue in his own way by withdrawing this money and not by gathering it and spreading it over the whole country in order that the poorer man might get portion of the money. But he had taken the criticism of the economists at its face value against the so-called inflation and has taken steps to withdraw the money and practically succeeded in withdrawing a lot of money from the people. It is not intended that he should sit tight over the collected money. He has got to inaugurate schemes in order that that money would reach the person who has not got the money and whose purchasing power has been curtailed on account of the rise of prices occasioned by the very inflation. He must see that the starving people whether they are in Calcutta and other parts of the country are given the purchasing power in order to find the requirements which they can get under the existing conditions of shortage. That is not to be. In fact, the Honourable the Food Member is making himself a scapegoat of all this criticism, whereas both this criticism and the guilt of the whole of the starvation and the deaths ought to be ascribed to his other colleagues, namely, the Honourable the Home Member and the Honourable the Finance Member. The Honourable the Home Member should be charged in the sense that he has clapped all the political leaders in jail and would not take the public into his confidence and would not allow them to work for the good of the country and the Honourable the Finance Member because of the financial policy which he has inaugurated albeit at the direction of Home Government. Now, I am sure whatever may be the plans that have been accepted and proposed to apply by the Food Department they would only be an external treatment for this symptom. The disease cannot be attacked that way. The disease can only be attacked if the Honourable the Finance Member makes up his mind that it should be tackled, tackled in the sense that he must put a purchasing power in the hands of the poor

people. Is he in a position now to say, owing to this inflation of currency, that the purchasing power of most of the people has increased? I know there are some military contractors, some industrialists and some big combines of manufacturers who have got more money than they can manage, but what about the 90 per cent of the population?

An Honourable Member: 99 per cent.

Mr Sami Venkatachalam Chetty: Is there not any means of helping the poor to tide over this calamity? How long can you go on giving the wrong twist that the present calamity is due to shortage of foodstuffs? Rushing of foodstuffs to those big cities and asking people to buy without money will add to their misery. Are you going to make bricks without straw? If that is so, the Honourable the Food Member would be justified in accepting all these criticisms and in accepting the responsibility for this sorry state of affairs. Otherwise, he must tackle the Honourable the Finance Member and the whole Government to change the financial policy and to see that some thing substantial is returned for the exported goods to the account of United Kingdom in order that you may improve the purchasing power of the people without, which I am sure, the situation will be considerably deteriorated more to the danger of the Government and of the people concerned.

Mr E.L.C. Gwilt (Bombay European): Sir, I commence by expressing my appreciation of the work of the Foodgrains Policy Committee and particularly that of its Chairman. The volume of its endeavour and the speed with which it was achieved and the comprehensiveness of its report call for the highest praise.

India, Sir, as a whole, is today faced with a food crisis and Bengal in the midst of a tragedy, the more deplorable because it might have been, in large measure, avoided, and the more tragic because thousands of souls are starving in a country of plenty — at any rate plenty judged by war standards.

India, as the Foodgrains Committee rightly says, has suffered practically none of the ravages of the war; from the ravages of nature she certainly has but even taking into account the damage done by the Bengal cyclone of last year and the loss of Burma rice imports, there is still sufficient grain in the country to feed the population on rationed standards, if procurement was not presenting such a problem and if India could be encouraged to operate as a single economic unit.

As things are, grain is now being brought to India in ships, most urgently required for the war, for the shortening of the suffering of millions of people outside India. The process is virtually one of pouring grain into a granary. Grain is being purchased from countries, whose emergency laws are such, that to profiteer in its sale, would result in the most dire penalties to the seller. Whatever may be the other considerations, and as I am aware of them, grain is being shipped to India to provide for Government in large measure, a stock pile with which to fight the activities of the profiteer. It is being landed in India at prices substantially less than those at which the wheat producing Provinces of this country are prepared to sell their large surpluses to the Central Government. In what other country of the world could these conditions exist today?

I would ask those who are deliberately holding up supplies of grain for higher prices to ask themselves whether they have seriously considered the implications of what they do, for unless there is a rapid change in the attitude of some of the 'surplus' Provinces, and National co-operation to assist towards procurement the future must hold the most serious of consequences for the Nation — consequences from which India may take a generation to recover. I would remind the House that, as the Honourable the Finance Member stated on

Tuesday last, Food forms the very basis upon which the economic structure of the country is built.

The end of the war in Europe may be nearer than many of us realise, and when the Axis occupied countries are liberated, there will be a vast number of people, numbers running comparable with a half of the population of India, indeed likely to be even more, who are not hungry, but bordering on complete starvation. They will need to be fed, and ships not required to continue the war against Japan must be used to carry food to them. Can India under such circumstances, expect the rest of the United Nations to permit the process of pouring grain into her granary to continue?

I would appeal to every Member of this House, to every section of the population to strive to avoid permitting the state of Bengal degenerating into a political issue, to which there has been a tendency. I hope, Sir, I shall not be misunderstood in an appeal to the Press, and particularly to the *Statesman* whom I pay tribute for the stand they have taken in directing attention to the ravages of the Bengal famine, not to allow their original commendable policy to become sensationalism, the repercussion of which may be the alarming of many, and encouraging hoarding. I would respectfully suggest for the consideration of the Press that in the future they give space to what is right in the rationed areas, as they have done in the past to what is wrong in Bengal and vigorously to drive home Lord Woolton's famous dictum - 'the profit motive must be taken out of the people's food'.

Bengal is news of the most tragic nature, because little there seems to be right as the report of the Foodgrains Committee correctly says, Bombay and Madras and other cities have ceased to be news. Rationing of food and good administration have prevented the enactment in these Cities of the grim scenes of Bengal, and though they would be the last to seek publicity. I would take the opportunity of paying tribute to Mr Knight and Mr Gorawala of the Province which it is my privilege to represent, and to their team of efficient and enthusiastic colleagues. To them is due the credit that the distribution of food in Bombay City, the second largest in India, runs as smoothly as it does particularly when it is remembered that in March of this year, its stock of food was little better than Calcutta's. The spirit of confidence that rationing has produced has been bought at the extremely reasonable figure of one rupee per head of population for that is the annual cost of administering it.

Now Sir, I should like to reply to my Honourable friend Mr Jamnadas Mehta who I am sorry to see is not in the House. He attacked the Bombay rationing scheme, and particularly the quality of grain sold under it. I would like to tell the House that the coolies employed by my company, my own personal servants, my co-Directors, myself and my staff eat sugar and grain, all purchased from precisely the same source. I have nothing to complain and so far as I am aware neither have any of the other parties I have mentioned at any rate not since the initial difficulties were overcome, and you can imagine, Sir, the difficulties in rationing 1 1/2 millions to 2 millions of people are considerable.

Now, Sir, I would ask that none of the grain being imported by the Central Government be supplied by them to any Province which has not shown that bona fides in introducing an efficient measure of food control or rationing. It is not an adequate answer for the Central Government to say that if it takes the precaution of handing that grain over to a Provincial Administration, there the responsibility of the Central Government ends. Only two Provincial Governments, Bombay and Madras, have a comprehensive rationing scheme, and only two States, namely, Travancore and Cochin.

Bombay proved before they introduced rationing that grain sold in Government shops

merely gave it an official entry to the black market, for there never can be, except on a ration basis, control over the people who make their purchases from Government retail grain establishments, or even retailers controlled by Government.

Unless, therefore, supplies of wheat imported from Australia are sold only to those Provinces who have a fully comprehensive ration scheme or show sufficient bona fides of introducing them in such areas as they are workable the needs of the sons of the people of India, now prisoners of war in Japanese hands and the millions of people in Axis bondage will have once again provided ships further to encourage black markets in India and their process of deliverance will be so much the longer delayed.

Those who have not given the problem thought, seem to regard rationing as a penalty, and it is perhaps only natural that those who live in surplus Provinces should be opposed to it. It is difficult for them to understand that rationing may save them too from being hungry, or to perceive it as ever remotely possible that an unscrupulous 'corner' in the market may leave them virtually a deficit province. I submit, Sir, that as things are in some of the surplus Provinces at the moment, such an eventuality is not outside the bounds of possibility.

Bombay and Madras and other rationed areas, as I have already said are no longer the news, because they are rationed but had they not been, the appalling conditions of Bengal would inevitably have extended to them and they too might now be equally firmly held in the grip of famine.

Time does not permit me to take more than a brief reference to the Note on rationing written by Mr Kirby, whom I am very pleased to see in the House. His Note is in answer to the question 'why should food rationing be inaugurated in a "surplus" Province?'. As the House knows, Mr Kirby is the Adviser upon rationing to the Government of India, and a great authority on his subject. He was in charge of the food supplies and rationing administration of London from 1939 and until last year, which period included the worst of the blitz.

I understand that he is going to speak on rationing, and I venture to suggest that the House will hear much of interest from him, but I would ask the Honourable the Food Member that Mr Kirby's note to which I have referred, shall be given to every Member of the House before the end of the Session.

Efficient rationing, however, must obviously be based upon a sufficiency of procurement.

In dealing with a man, whatever be his status in life, to convince him that what he is doing is anti-social and calculated to cause suffering to his fellow men there can only be but the shortest limit in appealing to his reason. When that limit is reached, there is justification for the most drastic steps to be taken against him.

May I ask of any Honourable Member in the Treasury Benches to tell me whether any one in this country received a heavy sentence for a food offence since war began? If not, has no man within the country been guilty of such an offence?

I appreciate only too well the difficulty facing Government in the matter of procurement, but I hope that they will be as harsh, as he is deserving, with any man who attempts to obstruct them by word or deed in their endeavours to procure grain. Of one thing I am certain; if they follow that policy they will be surprised at the weight of public opinion that will support them. The food emergency within the country, Sir, will not be of short duration, to promote confidence in the cultivator, therefore, must be the immediate desideratum towards the procurement of his crops. To gain his confidence, however, something must be offered to him for the future, and I submit, Sir, in addition to the suggestions made by the Foodgrains Policy Committee, in addition to those that were made by my colleague

Mr Lawson and as a long-term policy, the establishment of Government buying agencies throughout the rural areas.

Many years ago South Africa was faced with a food problem, not as serious as that confronting India at the moment, but serious enough. The cultivator was the poorest of the poor; the individual who bought his grain had him perpetually in his debt. The price at which that country's grain was sold in international markets was vastly different from the price at which the middleman purchased from the cultivator. As a long-term plan South Africa established Government purchasing agencies in rural areas and encouraged the cultivator to bring his grain to them. An immediate deposit price was paid to him and when the grain was eventually sold by Government in the world's market but for a small commission, the balance of the price at which it was sold was paid directly to the cultivator. It is an extremely short-sighted policy when dealing with the food of a country for any man to say, 'Do nothing to prevent the cultivator making hay while the sun shines'; and the truth of the statement, I submit, is evidenced by the suffering of Bengal today except that at the present moment there is no evidence to show that the cultivator is getting his full share of the greatly increased price of grain.

I would further suggest that food in every sense of the word should become the responsibility of the Food Department of the Central Government. I would also suggest that any senior appointment made to any of the provincial food administrations be so made by the Public Services Commission. Also that within the Food Department there be an agricultural department and that during the war all agricultural responsibilities be removed from the Department of Education, Health and Lands. I sincerely hope that those in charge of that department will not regard what I have said as a reflection upon them. That is the last motive I have in mind; but food has become such a serious question and as Agriculture is the parent of food, I consider that they should be under the same responsibility. If Agriculture is too vast a subject for the Food Department my suggestion is that it should be a separate portfolio.

Before I close I will make an appeal to the more fortunate people in this country, to my own countrymen. I would ask them to eat no more rice until the war is finished. It may seem a trivial amount, but in the aggregate it is probably substantial. Recently in a weekly paper there was an account of an Indian wedding to which seven thousand guests were invited. No doubt most of them had their fill. How many of the poor could have been fed by the food that was consumed at that tamasha! The Government of Bombay issued an order prohibiting any entertainment at which food was served to consist of more than 50 people. They have had to amend that order because it was found that more than one ostensible host was entertaining at the same function and increasing the guests to hundreds. I will not enlarge on the mentality of people who were responsible for that second order being made-necessary.

In the finality I would urge the imperativeness of forward planning. Are Government more than satisfied with their plan for a year ahead? Are they satisfied with their plan for five years ahead, and is there a five years' plan? For unless such planning exists the future can only consist of one piece of panic legislation after another.

Maulana Zafar Ali Khan: Sir, not very long ago the world used to look upon India as a land of smiling fields, bumper harvests, flowing with milk and honey. Those were days when we had no railways, no speedy modes of transport and no electricity, no buses, no motors, nothing whatever. Then we had to depend not upon mechanical contrivances but upon ourselves. When famine visited this country occasionally from time to time there was nothing to arrest the march and the depredations of the scarcity spectre. One such visitation was the famine of Bengal in 1770. Thousands of people died of starvation then; but in the

long history of this country there is no parallel to be found to the terrible calamity that has overtaken Bengal these days. We find thousands of people starving to death before our eyes; we find human corpses and human beings still living being devoured by vultures and jackals, we find that owing to the dearth of fuel funeral pyres cannot be lighted and Hindus have to bury their dead bodies under the ground; and we find before our eyes dead bodies floating in the streams. This is the condition of a province, the population of which is 6 crores; and although millions and millions of tons of foodgrains have been sent to Calcutta and elsewhere in the mofusil the rate of deaths does not seem to decrease. The other day I asked a question on the floor of this House whether the attention of the Food Member was drawn to a statement made by the Honourable Pundit Kunzru that 50,000 people were dying of starvation every week in Bengal; and the reply was that these are guesses and he could make similar guesses but it is better that guesses should not be made. Pundit Kunzru's statement has now been confirmed by that of Dr Shyama Prasad Mukherji who said that 50,000 people were dying of starvation in Bengal every week. So a Government which does not know the actual number of people dying of starvation can surely be charged with lack of sympathy for the life of people in this country. The first and foremost cause of this terrible state of affairs is the lack of sympathy on the part of British Imperialism and the British system of Government with life as it actually is in this country. I remember a statement made by the *London Times* many years ago when the Persian question was before the public that the entire realm of Persia was not worth the bones of a single British Grenadier. I thought that those days were gone for ever. But when this morning Mr Neogy told us that a military officer in these days was heard saying that that life of a mule is more precious than the life of an average civilian in this country, so far as the successful prosecution of the war is concerned, I thought that those days perhaps are again upon us. So I only hope and trust that this is only the expression of a single individual or a number of individuals and whole British nation is not of the same mind. And especially the gentlemen who are sitting opposite us do not hold the same view. They have told us that they were trying to fight Indian poverty and bury it in some dark corner of the black market.

They speak of control: Control of foodstuffs, control of commodities, control of prices and some other controls. Perhaps a time may come when seeing that these controls are of no avail there will be another control from the Government and that control will be birth-control, because then alone numbers of the people of this country will be reduced to a normal condition from the point of view of the British Government and then they won't require any measure to fight this starvation.

Sardar Mangal Singh: What about the black market?

Maulana Zafar Ali Khan: Black markets will remain so long as no definite steps are taken by the Indian Government to fight these high soaring prices and as long as the Finance Minister will remain obdurate in the matter of currency policy; so long as that is the state of affairs, there is no hope for this country.

Sir, they were referring to the Punjab. I come from the Punjab and you will be amazed to hear that although we are a surplus province, yet in that surplus province the rate of *atta* is 3 1/2 seers to a rupee. Sugar cannot be had for love or money. The prices of commodities have shot up and anything that we could get for four annas formerly, cannot be had for one rupee today. The purchasing power of the money has been reduced; a rupee is four annas. And you talk of growing more food. Why should people grow more food? Why should people of the Punjab grow more food? I tell you about the people of the Punjab: They are a set of peasant proprietors, their average holdings not above five acres per head, and they have to

live upon it and if they gain anything by producing wheat they lose it by spending it on sugar, cloth and on other commodities which they require. So when you talk of controlling prices and you threaten the provinces with dire consequences in the event of their refusing to abide by the decision of the Imperial Government, I tell you that you will have to make an exception in the case of the Punjab so far as control of prices is concerned, because in the Punjab we find that whenever there is a control the commodity, of which control has been proclaimed, disappears suddenly — God knows where. You will have to control wheat throughout the Punjab by going to every hamlet where it is stored in small quantities and still you will not find yourself able to control the situation. The Government of India in the Food Department have issued a memorandum — God knows how they managed to commit themselves, and I am surprised to find that no Member of this House has drawn the attention of Government to a certain passage in this memorandum. In that passage the Government has condemned itself. It reads thus:

The marketable surplus of foodgrains produced in India consist, by and large, of the small margins of production over consumption of 50 to 55 million cultivators who normally live on a very meagre standard of nutrition. Any increase in their money income tends to result in increased consumption and proportionate decrease in the marketable surplus.

What are the implications of this statement? The implications are firstly, the average Indian peasant does not get a square meal from year's end to year's end to and secondly, if surplus foodgrains are to come to the market at all in appreciable quantities, the income of the producer must not be allowed to increase, because the producer would then consume more and leave very little to come to the market. So the Government is interested in keeping producer poor, poor to the verge of starvation. Who is the hoarder then, who is the profiteer? The cultivator in the Punjab earns only as much as it is sufficient to feed himself and something beyond that which goes to the market. If he earns more by way of profit, that is spent upon himself and very little is left for the big stock-holders, big profiteers and the middlemen and others.

[At this stage, Mr President (**The Honourable Sir Abdur Rahim**) resumed the Chair]

I should like again to emphasise that the Punjab's firm resolve not to allow control must be listened to and must be heard with respect. The Punjab, as has been rightly pointed out is the sword arm of the Empire. Twenty millions of Indians are now shedding their life blood on battle fields, and of these 20 millions the majority are out of the Punjab.

The Honourable Member: It is not 20 millions; it is 2 millions.

Maulana Zafar Ali Khan: I have always differed in many questions from Choudhary Sir Chottu Ram, but I am with him when he declares from the floor of the Punjab Assembly that if the Government forced their hands they will have no option but to resign and when they resign, I will see how the Government manages to carry things to their liking.

Then Sir, I would like to say something about transport. When we Mussalmans called upon the British Government to provide us with one or two snips to take our pilgrims from Bombay to Jeddah, the Government said they were afraid of the action of the enemy and they were afraid for the lives of the pilgrims which they held too sacred to be exposed to this danger, and therefore there was going to be no pilgrimage this year. Mr Amery had not yet come to his proper mood, all that he had to say was 'Let us prosecute the war successfully and after the war is over we will see what can do about the people of Bengal'. So he glibly pointed

out that as there was no shipping accommodation owing to the necessities and exigencies of the war, wheat from Canada or Australia could not be imported. But recently we find that six ships has been provided. Where did they come out of? Out of some mysterious hole? These ships coming to India, reaching the shores of India, unloading their cargo where did they come from? If they can come now why did not they come earlier? If they had come earlier, thousands of lives might have been saved. But you did not look at it from that point of view. Let me remind the Honourable the Railway Member although he is not as much to blame as his predecessor was, still a certain amount of blame attaches to him. Under the basic system the Punjab offered millions of tons of wheat to the Government, and a proportion of that was set apart for Bengal. From the figures given by my friend, Sardar Mangal Singh you will have found that a large proportion of this stock which was held for the benefit of Bengal was not transported at all. Who is to blame?

The Honourable Sir Edward Benthall: Where is it?

Dr P.N. Banerjea: It was transported late.

Maulana Zafar Ali Khan: You did not transport it; it was still lying there.

Sardar Mangal Singh: Where was it in July and August? That is the point. Now you have taken it away and there are no stocks.

Mr President (**The Honourable Sir Abdur Rahim**): The Honourable has already had his speech.

Maulana Zafar Ali Khan: So, the best thing is that you should not pose as Popes of Rome and that you are infallible. The worst blunder that the Government commits is that it looks upon itself as sacrosanct; it does not believe in anybody calling it liable to err, because they are not human. Are you inhuman? You are all Popes of Rome who looks upon himself as infallible. So, If you repose confidence in us and we repose confidence in you, we are prepared to co-operate with you in the successful prosecution of the war. We are as much interested in the success of the British victory and the victory of the Allies as you yourself are; we are all against Nazis, we are all against the Japanese; we are all against Italians. We are all interested in seeing that you succeed. When that is so, why should you not place confidence in us? That want of confidence is at the bottom of the whole trouble. That trouble should go; and whenever you commit a blunder, accept it and acknowledge it, and we will respect you; but unfortunately you do not. . . .

Mr President (**The Honourable Sir Abdur Rahim**): The Honourable Member's time is up.

Maulana Zafar Ali Khan: Your predecessor, Sir, gave ten minutes more to Sir Abdul Halim Ghuznavi.

Mr President (**The Honourable Sir Abdur Rahim**): Order, order.

Mr W.H. Kirby (Government of India: Nominated Official): Sir, more than one Honourable Member this afternoon has mentioned rationing, and I should like to say a few words about that subject. But before giving an outline of the principles of a food rationing scheme, I should like to mention an incident that occurred last week which will illustrate the necessity for being precise and accurate when dealing in all matters relating to food. This incident relates to the quite unnecessary apprehension that exists amongst certain large sections of the people that rationing is a form of punishment, if not of some thing much worse. I was discussing last week the Bengal food position with an Indian grain merchant of long experience, who also was a Bengal Government purchasing agent for the recently marketed Aus crop . . .

Pandit Lakshmi Kanta Maitra: What is his name, please?

Mr W.H. Kirby: He said in reply to my question as to how he viewed rationing ... Calcutta 'Please do not ration us. If you do, you will kill us. The explanation of this startling statement was that since the people will be kept down to a ration of foodgrains of say, one pound per person per day the Government had not got the stocks, and therefore would not give the people anything like that amount; therefore there was nothing else for them but to starve. Sir, we shall not introduce rationing without first having the requisite stocks and reserves; consequently such erroneous ideas as those just mentioned will vanish as soon as the public see that in fact rationing means that their food supply is assured and under the rationing schemes properly organized they will get their food easily. But such a statement of apprehension as the one I have just quoted is a significant indication that it is necessary to educate the public mind on rationing and it is in this that the leaders of the people and particularly Members of this House can assist the Department of Food. Perhaps the words 'food control' would be a better designation than rationing, and more quickly convey confidence which must be the foundation of all operations connected with the feeding of the people. Before the Ministry of Food in England inaugurated individual card rationing in the early days of 1940, there was an initial period of strict food control, during which time the people realized that a competent well organized administration was undertaking the vital task of ensuring that the people would be properly fed and that the supply and price of the essential pods would be firmly controlled.

But directly the pressure of events started to interfere with supply and prices, full scale rationing was inaugurated which resulted in complete restoration of the temporarily lost confidence. One of the first, and best examples in India of the benefits of food control and rationing to the people can be found in Bombay as has already been mentioned, where today no one feels any apprehension whatsoever as to where his food is coming from, nor that the prices will fluctuate largely from day to day. In the Army, the word rations has a very definite meaning of guaranteed feeding. Why then, must the civilian be made to believe by unthinking persons that rationing means starvation instead of salvation?

The Department of food has for many months past been advising the Provincial Governments and the States on all matters relating to food control, whilst in August and September, of this year, the Department in collaboration with the Bombay Government inaugurated a series of conferences and lectures on food control and rationing. In the short space of time at my disposal, it is not possible to deal adequately with the complicated subject of food control and rationing; but a summary of the salient points can be stated as follows:

The object of food rationing is not primarily to reduce consumption, but to distribute short supplies in an equitable manner. When supplies are ample and assured as in surplus Provinces and States, the control of consumption is necessary for the effective mobilization of resources for war purposes; but when supplies are short and irregular, a closely controlled rationing scheme is even more necessary to ensure fair distribution to everybody. Food rationing must go hand in hand with price control. No price control can withstand unaided, the pressure of increasing demand on dwindling supplies, and it must be accompanied by quantitative controls over demand and supply. Equally rationing requires price control, since, no matter how widespread rationing is, it will not ensure equitable distribution among all income groups unless prices are low enough to enable every one to buy the quantity of ration to which every one is entitled.

Food rationing schemes should in their policy and detail be as far as possible uniform. Their smooth operation depends on the degree to which they are coordinated with related

policies, more especially controls over production supply, price and income. This cannot be operated in watertight compartments. There is seldom any justification for local variation in rationing schemes. It is more efficient, more intelligible, and less wasteful for a uniform system prepared and supervised by expert administrators, to be adopted throughout the country. Food rationing should be comprehensive. It is seldom possible to introduce food rationing of any particular article in short supply because once control and rationing of an essential food article is established then everybody tries to rush and buy up similar kind of article. All rationing must have legal sanctions which will give necessary powers dealing with enumeration etc., which is a very vast task and it is one of the great difficulties encountered when rationing a large and congested area. Besides legal sanctions for enumeration and entering into peoples houses, there is legal sanction required in connection with all the other administrative control. These must be rigorously enforced and it is advisable to have a special staff for dealing with that purpose.

Sir, I should like to emphasise the point that, although it is necessary to have a special legal staff for enforcing such rationing orders, it should not be necessary to look upon such a legal staff and inspectors as some kind of internal gestapo, because many of the poor people do offend against rationing laws simply out of ignorance. It is necessary to associate the public and the trade with rationing administration. Local Food Advisory Councils or Food Control Committees should be set up, having as members representatives of the trade, transport and distribution, and hotel and catering experts, and welfare workers, etc. The functions of these committees should be advisory and not executive. We heard to-day from an Honourable Member about Dacca. Dacca in Bengal, has a population of 235,000. The whole of the rationing scheme, distribution, looking after the welfare of destitutes, is entirely in the hands of voluntary workers who are doing a splendid job of work and are not costing the Bengal Government anything more than the bare necessities for ordinary administration. The distribution of foodstuffs by rationing must be carefully co-ordinated with the supply position, and its planning supported by an accurate statistical balance sheet adjusted day by day. We must, when dealing with the people in their millions, know exactly, as a banker must know exactly what cash there is in his strong rooms — we must have an exact balance sheet of what we have got in stock, what is going out, what is being purchased, what has been arriving, and what we have in reserve. Both in supply and in distribution, wholesale and retail traders should be used, under Government license, and supervision, to carry out the operations as Government agents. In those cases where this is not possible — because some traders will not obey the rules, there is no alternative but that the Government must take supreme charge and open up their own Government distribution centres and shops, and if necessary, become their own agents. Please do not think I am saying anything against the trade—traders are the ordinary real avenues for distribution. One or two Members have mentioned this afternoon, that Government have only to impose a price control order for the goods to disappear. Sir, there is only one person who makes those goods disappear it is not Government, it is not consumer, but it is the trader. The strength of the supply position in relation to a rationing organisation is the maintenance of reserve stocks of the essential rationed foods. These reserves or 'buffer' stocks can be accumulated gradually and 'turned over' in order to prevent deterioration.

Certain authorities have stated that we cannot bring in rationing because we have not bought up six months or a year's supply. Sir, it is never necessary for an organized administration running a rationing scheme to have more than one month's supply, and in fact, if investigations could be made, it would be discovered that in the ordinary course of business

it is seldom that in an ordinary unrationed area the trader has anything like one month's stock at the back of him.

As regards propaganda and publicity, this is a very essential point of any food control and rationing scheme. As an Honourable Member has said this afternoon, food is 'news'. The good-will of the press can be of immense value in the administration of food rationing. Daily advertisements which of course should be paid for, in the local newspapers are recommended with a distinctive layout and a constant position in the paper — people in their own papers will look for a certain sign on any day at the same place, so that they may know exactly what is happening about their food. In addition to the press, there are many other ways well known to those specializing in publicity such as films, wireless, loud speaker vans. All these aids to disseminating correct news are used by all the large areas now administering rationing schemes.

When a country is in the midst of a serious crisis — as India now is in relation to food — it is illogical that, through no fault of their own, the population of certain provinces and States are at starvation level, whilst others are surrounded by ample food. Besides being illogical, such a state is anti-social, non-ethical and a possible breeding ground of civil discontent. The inauguration of a rationing scheme enables the authority to calculate with mathematical accuracy the exact requirements of the staple foods for the population, and is in a position to give a true statement that will show how such surplus foodstuff can be released for deficit areas. Since the population of all large cities, especially those situated on the coastline, are unable to grow food, but are usually occupied in manufacturing the material needs of the countryside, each set of the community is helpless without the aid of the other and therefore they are definite partners in the whole of the economic structure. To the objection raised by some authorities in connection with the inauguration of a complicated piece of administrative machine and the necessity to engage a large staff, the answer is, the more employment that can be given to a country's citizens the better for every one concerned, provided, of course, that elementary economics are observed. On the other hand, as was mentioned just now about Dacca, it is possible to run a food control scheme on a voluntary administrative machinery of a town as large as Dacca with its 235,000 inhabitants. Since food rationing instils confidence into the people, the Authority is the sole judge of the amount it is prepared to pay for securing such confidence, and an efficiently run food control scheme. As an Honourable Member mentioned a little while ago, the cost of such confidence to the people of Bombay amounts only to one rupee per person per year. Provided the Authority has the requisite skilled staff and the right outlook, no difficulty should be encountered in devising an efficient rationing scheme to meet the extent of the particular problem. Each city has its own particular problem. Several authorities, I know, have installed their own training scheme for their own clerks because they realise that the staff selected for dealing with the people must be of that calibre, who are prepared to almost dedicate their lives to the people. When an efficient food control scheme is in operation it is not only the population which feels a sense of security and confidence but it is the Authority itself, because it is the possessor of an instrument of a machine, that can be made to cover several other forms of consumer goods control other than food.

Sir, it is reasonable to assume, as has been stated, that since the eyes of the world are now focussed on India and India's food situation, the amount of practical help in the form of shipments of grain will be governed by the amount of efficient food control organisation initiated and maintained by the Provinces and States. The United Nations could not have possibly carried on their war effort, as they have done, without rationing, whether it is rationing

of food stuffs or clothing or the luxuries of life, in fact the real regimentation of all the people. Therefore it is reasonable to suppose that the United Nations will judge the food control administration of India by the food control schemes, inaugurated or neglected. The inauguration of food control and food rationing in time of war might conceivably mark the beginning in this country of a new era of nutritional feeding. A great deal has still to be done in the way of looking after the feeding of children. It might mark the beginning of a new era of equitable distribution and also of a new type of trading and of course more satisfactory price structure for every one concerned, not only the consumer but also the producer.

Mr President (**The Honourable Sir Abdur Rahim**): The Honourable Member's time is up.

Mr W.H. Kirby: In conclusion, I will end with a claim for the endorsement of a policy of rationing by the House and an appeal to all Members for their aid and co operation in making a success of this policy throughout India and thus restore confidence and good will without which so little can be done.

Sir Cowasjee Jehangir: I promise not to repeat anything that has been said upto now and thus save the time of this Honourable House. It is no use trying to stress the point of Bengal's misery and Bengal's condition. It is known to everybody and Bengal has the sympathy of the rest of India.

I would like first to draw the attention of my Honourable friend, the Food Member, and his Secretary to a portion of the note that has been circulated to us. They try to show a deficit of 2 million tons throughout India but I regret I am unable to follow the figures. They show that ordinarily India produces 51 1/2 million tons a year and that in the year 1942-3, that is the year ending March 1943, India's production was 52.1, thus giving India .6 million more tons than is usual. Having started with that premise, they go to show how the deficit of 2 1/2 million tons is made up. They give us the deficit due to the loss of Burma. Burma supplied India with a million and a half tons of rice. They show us that 650 thousand tons is required for defence services and 300 thousand tons is exported. The pluses and the minuses give about 2 1/2 million tons deficit, but may I point out to them that they have begun with two items which are common both to the last year and the year 1942-3. The Defence services were supplied with foodgrains in 1941-2. Exports were more than 300 thousand tons in 1941-2. Both these factors being common to the two years they should not be taken into consideration in making up their deficit and the deficit they have shown is therefore larger by at least a million tons than it ought to be according to their own figures. Now, Sir, I would like an explanation why is it necessary to show a deficit of 2 1/2 million tons, while according to their own figures it should be at the most 1 1/2 million or less. The only factor which has to be taken into consideration in comparing these two years is the loss of Burma. That is 1 1/2 million tons. Against that they have got a surplus of .6 million. Then I was surprised to hear the Honourable Member in charge this morning say that the 'Grow More Food' campaign had yielded 3 1/2 million tons. Where has that disappeared to? Where is that in your calculation? It is proverbial that statistics always prove the wrong thing. In this case, certainly the statistics put up by the Government are very faulty. The only conclusion we can come to is that there is a very big allowance made by the Government for the black market. They are fairly certain that a large quantity is going there and consciously or unconsciously they are making an allowance for it, or it may be that the figures are drawn up from facts supplied to them by the province. The provinces have been asked to give figures. That we do know. The result of the figures supplied to the Government of India by the provinces, may be, shows a deficit

on the whole of 2 1/2 millions. And instead of telling us that those figures come from the provinces or the Provincial Governments, they have tried to show us this deficit of 2 1/2 millions in this rather illogical method. Let us take it for granted that this deficit of 2 1/2 millions is arrived at from figures supplied by the provinces: so much surplus, so much deficit, the total being a deficit of 2 1/2 millions. If the figure of production for 1942-43 of 52.1 millions correct, then all I can say is that the provinces have been most conservative in the figures they have supplied and that is but human nature. After all, when one is responsible for the feeding of a province, one is liable to be a little more conservative than one would otherwise be, but to be so conservative as this gives a very wrong impression and leads us to wrong conclusions. If my calculations are correct, then the only conclusion I can draw is that there is a very big black market in India, that there is a considerable amount of grain hidden which Government have not been able to detect and that it is the duty of the Central Government to see that the Provincial Governments find this food which is most probably not in the hands of the agriculturist and which is certainly not in the hands of the consumer. There are certain consumers who may have got a couple of months' stock, but they are very few and their number is negligible. That stock is somewhere and it must be with the merchants. It is the duty of the Provincial Governments to find that stock because these figures show that there is that stock and it is the duty of the Central Government to insist upon Provincial Governments finding it out to enable the people get at it.

Now, Sir, there is another passage in this report which, in my opinion, is most interesting. I will read it. This is how it runs:

Unless conditions are such that the cultivator has no incentive to hold back his supplies such as the constant increase in commodity prices resulting from monetary expansion and unless the distributive machinery is prepared to play its own part fairly and well under the controlled scheme, it is clear that there is no alternative but requisitioning on a very large scale directly from the cultivators, a course which is fraught with serious political risks.

Now, Sir, I personally have come to the conclusion from what little I have seen and learnt in my own province that the only method of procurement that will succeed in India is to take the grain from the cultivator in the fields and not to let it pass into any other hands. I am told in this report that in doing this there are political risks. I am not quite able to follow what those political risks are. I do not for a minute contend that the agriculturist should not be given by Government a fair and equitable price for the grain which they may procure from him. He should be given a really good profit. And let me remind the Honourable House that those few lucky agriculturists who have lands today and who are getting the profits from those lands are paying the same taxation as they were paying before. Of course, I do not include in this category the thousands of agricultural labourers. Taxation on all other products has gone up by leaps and bounds but the taxation on the profits from lands, which the very few in this country enjoy, has not increased. Therefore, I plead that grain should be bought by Government agency — I do not mean the Central Government agency but the Provincial Government agency — and it should be bought direct from the agriculturist in the fields at a reasonable and good profit. I am asking for nothing that would bring about any risks.

Mr Muhammad Azhar Ali (Lucknow and Fyzabad Divisions: Muhammadan Rural): It is impossible.

Sir Cowasjee Jehangir: I do not see why it is impossible. We have our land revenue officers. I do not know about Bengal because there is Permanent settlement there, but I do

know about the province of Bombay where we have our land revenue officers who are capable of buying at a fair and equitable rate from the agriculturist. Nothing is easy; everything is difficult. There are many complications in what I suggest and I am fully aware of them. But that the only equitable way in which grain can be procured for the common good of all. That is the second point I desire to stress and I do hope that the Central Government will bring this point to the attention of Provincial Governments who are reluctant to adopt these measures. They may be reluctant today but by next year they may have again learnt their lesson, a lesson from which Members of Government and their servants will not suffer but a lesson from which the teeming millions will suffer. Procurement is the most important thing so. Procurement at a fair rate is the second point. Again, I will emphasise the point that the agriculturist must be given a proper profit.

Mr Govind V. Deshmukh: But how do you decide to determine it?

Sir Cowasjee Jehangir: That is not difficult. The taxation has not gone up. That factor is even. It can be done by revenue officers. I know there is one danger. The revenue officers value the crop and the land revenue is periodically settled on those reports. Surely, with proper supervision it can be decided as to what the agriculturist should get in the first instance. Once you have got the grain that way, there will be some other difficulties. For instance, there will be difficulties of storing and I am fully alive to them. But I can see no other way out. I hope that at least my province of Bombay will adopt it and again show the way how procurement can be done in the interests of all.

Mr Govind V. Deshmukh: It must be in the interests of the agriculturist.

Sir Cowasjee Jehangir: Yes, in the interests of the agriculturist as well. After all the interests of the consumer is also to be borne in mind.

Mr Govind V. Deshmukh: And the agriculturist is also a consumer.

Sir Cowasjee Jehangir: Everybody's interest should be borne in mind. The agriculturist must be given a good profit and even after giving him a good profit by my method it will be found that the consumer will get his grain at a cheaper rate than he is getting it today.

But there are many obstacles and one of the main obstacles in the way is the honesty of petty Government officials who deal directly with the agriculturists. I fully realise the danger. I have had personal experience of that class of officials, many of them are honest, many of them on very small salaries are serving the Government and the people from generation to generation, but there are very often exceptions to the rule and these few exceptions may ruin the whole scheme. I am fully aware of that. But I am not going into all these details as I have said before. There are objections and difficulties to all schemes.

An Honourable Member: It is all right on paper.

Sir Cowasjee Jehangir: I would urge that others have carried out the scheme successfully. I can give instances where it has been carried out successfully.

Sardar Mangal Singh: Has the Honourable Member ever seen a field or a crop?

Sir Cowasjee Jehangir: If the Honourable Member expects that everybody is as ignorant about subjects with which he is not personally connected, as he himself is, then he is very much mistaken. I have had something to do with the Land Revenue Department of my Province and I have had something to do with the agriculturist and I maintain that what I have suggested is the only method which will in the end be found efficacious. These are the two main points to which I wish to draw the attention of the House.

I was very glad to hear from Mr Kirby the principle laid down that, in rationing, there must at least be a month's stock. I was under the impression that after coming to this country,

he had come to the conclusion that rationing under any circumstances was the best thing to do: I am really glad to find that he has come to the conclusion that while working the ration system, if you run short at any time, you will cause considerable amount of suspicion, unrest etc. which will make the rationing scheme a failure. Therefore, the principle must be laid down that in all rationing schemes there must be at least a month's stock and also the likelihood of maintaining these stocks.

Mr Hooseinbhoy A. Lalljee (Bombay Central Division: Muhammad Rural): He said you must have a balance sheet of food grains.

Sir Cowasjee Jehangir: The balance sheet is all right when you have got money. Now, Mr President, that is a principle which I was very glad to hear him enunciate and I endorse, as many of us have done in this House that rationing is the only equitable method of distributing food. Why is it that it is opposed? It is opposed mainly from fear that it may be a complete failure, that is to say, you may run short of food altogether and nobody will get any thing at all. It is also opposed by those people who can afford to buy food at any price.

Maulana Zafar Ali Khan: Rationing in big cities or in the villages?

Sir Cowasjee Jehangir: I am not talking of villages. Let us begin with big cities with a population of a lakh of people and then we can go on to villages. Rationing is opposed by those who can afford to buy things at any price because under rationing they will only get a certain quantity and not be allowed to buy as they like, large quantities because they have got a fat purse. That is one of the apprehensions. That is the class of people who are most vocal. That is the conclusion I have come to from the experience in my own city.

I have nothing further to say except I hope and trust that the Central Government will see to it that distribution takes place in an equitable manner at least in Bengal, but that if it does not, they will exercise their authority as a Central Government to see at least in those Provinces, the lower officials or the merchants do not attempt to take advantage of the sufferings of the people for their own ends. If that prevails in Bengal or continues to prevail in Bengal then God help Bengal and consequently God help the whole of India because the failure in Bengal will surely affect the other parts of India next year and there will be shortage every where. It will be the duty of the Central Government to see that this distribution is carried out equitably and fairly and if they fail in that, they will have failed in their duty.

Rao Bahadur N. Siva Raj (Nominated Non-Official): A debate on Food in India very rightly opens a wide area of discussion and it is possible for Honourable Members of this House to make suggestions and offer many criticisms to the Government which might rightly be said to be not wide off the mark. I surely believe that for the present it would be not necessary for us to go into the causes of our present crisis, though a study of the causes might indicate to the lines on which our situation regarding food can be bettered or improved in the future. I believe, Sir, that primary responsibility for the provision of food during the war is that of His Majesty's Government. It is well known, I have already mentioned before, that food has never been and never was the concern of any Government either provincial or central in India. I do not suppose the fault is only of the British Government in India. Even the predecessors of the British Government in India have never tackled this question of feeding the populations of India; so much so that it will be right for any Honourable Member to make observation that the food economy of India was always unstable and not strong and it was liable to be seriously upset at any strain which has been brought upon it, such for instance, as by war. If we feel the food crisis so keenly today it is because the social economy of India has been affected by the strain of this modern war.

Whatever position India occupies in the British Empire or in the constitutional status amongst the other parts of the British Empire, the fact remains that India is today on a war basis on account of the responsibility that has been imposed upon her by the British Government. It was the British Government that declared war against Germany; consequently India had to declare war, and it is my contention that those who took this responsibility to declare war have also to bear the responsibility of finding the food supply for the civilian population of India. They have not done so either because they thought there was no necessity for it or because they thought that the Government of India had both the capacity and the competency to do so. However the results do not seem to justify their expectations. It is indeed hard luck that it was not possible also for the British Government or for the Government of India to conceive of a position in India which would be followed by the conquest on the east. They never for once imagined that it was possible for a country like Japan — after all an eastern nation — to advance so rapidly against the forces of the Allies or against the Britishers. Otherwise I should certainly feel that the Government of India and the British Government would have made a provision for all this trouble. We find that long before the war started, in spite of the fact that the Englishman is supposed to drift or stumble into success, in England steps have been taken to see that sufficient stocks of food are built up to pass through this crisis of war. Even though it was easier in the case of the English food structure to do it the fact remains that neither the British Government nor the Government of India have ever done any such thing like that in India. And in this respect I do not blame even the Government of India. In normal times and in peace times whatever initiative the Government of India may have had and whatever powers they may have certainly during this war such initiative has been assumed and taken away from them by His Majesty's Government; so that every circumstance practically they have to look to His Majesty's Government for advice, guidance and instruction. And I think in this particular case of lack of food for the civilian population of India I should personally blame His Majesty's Government.

With these remarks I should now like to refer to the subject of a Royal Commission or the subject of an inquiry. I am not a believer, even though I hear that the Leaders of the Parties and the Parties themselves have agreed or likely to agree upon a common amendment on this question of Royal Commission, I feel that such Commission will be useful only at a later stage. But at the present moment I sincerely think that it is of no use at all unless Royal Commission comes as a sort of relief society or, in Mr Jinnah's happy phrase as a fire brigade to put down the fire which is now raging in Bengal. But if it is a matter of inquiring into the food situation of India as a whole, I do not think that a Royal Commission need come now. And there is another point about this Royal Commission coming at the present moment. If they come now they are likely to upset what little plans the Government of India or the Government of Bengal have devised so far as the Bengal famine is concerned, to relieve the distress. So I do not feel quite enthusiastic about this Royal Commission. But if it is the wish of the House that there should be a Royal Commission I have no objection to it at all.

Sir, I am to place before the House the suggestion that during the period of the war the Government of India should have the responsibility for food that food actually must become a Central responsibility, and if it is necessary that an amendment of the Government of India Act should be made to confer upon the Government of India such powers as would make food a Central responsibility, I would even ask the Government of India to address the Secretary of State to have the Government of India Act amended in that way because, in my opinion and in the opinion of the Association of which I happen to be the President

and which has passed a Resolution to this effect, unless food is made a Central responsibility it will not be possible for the Government of India to enforce such of the measures as they have now in view for the solution of this problem. So I would suggest that the Government of India should immediately be vested with the responsibility for food and the food administration throughout India. We find very unfortunately indeed that the provinces have sought to exercise at a wrong moment such power and independence of the Government of India that they seem to possess in their provincial autonomy. I wish the provinces would seriously realise the necessity for co-operating with the Government of India in such measures as they have taken.

With regard to rationing I wish to say that so far as Madras city and other cities in the Madras province are concerned, rationing has really gone a great deal to improve the situation and to restore the confidence of the public in the matter of food supply. I happen to be a member of the Madras Provincial Food Council and I know that the Government of Madras, because of the early steps it took to see that sufficient stock was kept in hand, found it possible to have the rationing system introduced there.

Dr P.N. Banerjea: There is no such Food Council in Bengal.

Rao Bahadur N. Siva Raj: We know that rationing has been a great success. Indeed there are certain difficulties in the matter of rationing. In Madras as my Honourable friend, Mr Venkatachalam Chetty, will agree, much of the stock that was meant for the City was actually in the hands of the wholesale dealers and much of the rice went underground, and for a long time the Madras Government were not able to tackle them; but on a certain day they stopped all the licenses of these wholesale dealers and they purchased all the stock that was necessary for the city of Madras through their grain purchase officers in the districts. And when they actually got this stock and distributed in the city by this rationing system they found that all their calculations were wrong and actually speaking, the Madras city had to have a much lesser quantity than their anticipations went, and consequently whatever excess there was went over to the villages. And the Madras Government did another thing. In spite of a deputation that was taken by the wholesale dealers that this ban on the licenses of the wholesale dealers or, as our friends would like to say, the normal channel of trade should be given up, the Madras Government declined to accede to their request and said that for a period of one year, at any rate, they would not remove this ban on the licenses of wholesale dealers. So I will say that rationing has been a success in the city of Madras. And I personally think the Government of India should take early steps to see that it is introduced in all provinces, irrespective of the fact whether it is a deficit area or a surplus area.

There is one other matter which I should like to mention in connection of the food situation. Actually we have had many arguments today but a few suggestions which will go to relieve the situation. The food situation, according to me, is due to two factors; one is that there is shortage of food and the other is that there is maldistribution. Shortage of food may be due to the wrath of God or due to the avarice of man. Whatever it is, the fact is that today we are facing a shortage of food and if it has been due to an act of God, the Government of India can escape the responsibility; but if it is due to maldistribution, I can only impress on the House that it is the responsibility of Government to set right that maldistribution. And if necessary they should take all powers that are possible to set right this maldistribution, and, as it has been suggested by me, if it is further necessary that the Parliament should be approached for amendment of the Government of India Act to confer upon them these powers, they must do that also.

The Assembly then adjourned till Eleven of the Clock on Tuesday, the 16th November 1943.

1. This refers to the resignation of three Members of Viceroy's Council. See Doc. 15 in Chapter IV – Ed.

50: Translation from a Bengali monthly magazine *Shanibarar Chithi*, Paus 1350 (Dec. 1943), p. 300

An extract from its 'Sambad-Sahitya' (literary news)

The Director of Public information of the Bengal Government has printed and published, through the Bengal Government Press, 5000 copies of a 16 pages pamphlet (double demy size) – all to disprove charges of corruption against the business firm Messrs M.M. Isphani Ltd. By this action five reams of white double demy size paper has been blackened. Soon we expect to see another pamphlet printed at Government expense to prove the purity of the moral character of the mistress of some highly placed Government official. We suppose that the country where millions die of starvation can only be saved by spending Government money to whitewash business houses or individuals. Bengal Government is keeping us alive.

51: Observations made by High Court regarding awarding of sentences in profiteering cases

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

Government of Bengal

To
All District Officers
C.P. Calcutta

Subject: Observation made by the High Court in connection with inadequate sentences awarded in certain profiteering cases by Magistrates in the Calcutta area.¹

Ref: This Deptt. circular Memo No. 1516 P.S. dated the 20th October, 1943.²

Memo

The undersigned is directed to invite attention to a recent judgement of the High Court in twelve profiteering cases (Emperor V.S. Joyram Pathak and others), extracts from which are attached to this memo (Annexure I).³ Details of two of these cases are included in the extract, in a third the conviction and sentence was set aside because there was at the time no controlled price of *atta* which was the subject matter of the prosecution: The order of the Court in the

remaining cases are in Annexure II.⁴ Particular attention is directed to the observations of the High Court upon

- (a) The legal effect of even a mere quotation of a price in excess of that which is fixed by law;
- (b) The necessity for deterrent sentences even against 'Small' traders (the scale of penalties imposed in revision by the High Court, will also be instructive to trying courts).
- (c) The High Court's readiness to admit and deal suitably with references for revision in cases in which adequate sentences had not been, or could not be, passed by the trying Magistrates; and
- (d) The necessity indicated by the Chief Justice of pursuing against 'bigger dealers', his suggestion of how this may be done.

2. The High Court also made certain observations in respect of the Calcutta Poor Box which are being considered by the Home (Police) Department.

No. 1730/1 (2) P.S.

Copy forwarded for information to the

- (1) Commissioners of Divisions.
- (2) I.G. of Police, Bengal (with spare copies for distribution to D.I.G.'s and S.P.'s).
- (3) S.G.B.
- (4) Board of Revenue, Bengal.
- (5) Finance Department.
- (6) C.L. and Industries Deptt.
- (7) Home (Defence) Department.
- (8) Home (Police) Department.

1. Doc. 48.

2. Not printed.

3. Details are in Doc. 48.

4. Doc. 48 may be seen.

52: Famine's effect on the rural poor (absence of violent protest) end of 1943

B.F. Report (1944-5) (extracts), pp. 67-8

8. In Chapter II a brief account has been given of the economy of rural Bengal in which it is shown that about half the families in the rural areas, depending wholly or mainly on the cultivation of land, hold less than 2 acres or are landless. Of these, some 2 million families -- about 10 million people are dependent mainly or entirely on agricultural wages. In addition, there are artisans such as potters, carpenters, basket-makers, weavers, etc., who depend mainly upon their trade for their livelihood and generally speaking are not themselves producers of food. And lastly, there are in each village indigent people who, for various reasons, depend wholly or partially on charity. A considerable proportion of the rural population lives on the

margin of subsistence, with few or no reserves of grain, money or other assets. As prices rose in the early part of 1943, non-producers were the first to suffer. Village charity, customarily in the form of gifts of rice, dried up not only because rice was in short supply but also because it had become such an expensive commodity. Those dependent on charity were thus soon reduced to starvation. Village labourers and artisans, at a somewhat higher economic level, sold their domestic utensils, ornaments, parts of their dwellings such as doors, windows and corrugated iron sheets, trade implements, clothes and domestic animals if they had any — sold indeed anything on which money could be raised — to more fortunate neighbours at cut-throat prices. They reduced their food intake by degrees to make their dwindling reserves of money and food last as long as possible. As the famine developed, numerous smallholders were reduced to the same straits. With the rise of prices early in the year, many were tempted to sell their stocks at prices which seemed at the time prodigious, but were in fact low in comparison with prices prevailing in subsequent months. They hoped to repurchase rice later for their own needs at lower prices, but actually prices soon soared far beyond their reach. Faced with starvation, many sold their land and other possessions to obtain money to buy rice, with continually rising prices the proceeds of the sale could ward off hunger for only a brief period.

9. Larger landholders benefited from the situation, since they could sell most of their rice at an enormous profit and keep sufficient for themselves and their families. But the cultivator of a holding below a certain size was not in this happy position. It has been said that small holders who possessed less than 5 bighas of land (17 acres) were vulnerable and usually forced to sell house and land and look for food elsewhere. This we consider to be an overstatement, but there can be no doubt that many small holders were compelled to sell their land.

10. The famine thus principally affected one section of the community — the poorer classes in rural areas. It is impossible to estimate the percentage of the rural population that suffered; possibly it was about one-tenth. The amount of distress differed of course, from district to district. Well-to-do people in country areas were not short of food and rice dealers and merchants prospered. The industrial population of Greater Calcutta was assured of its food supply throughout the famine, and while some of the urban lower middle classes found it difficult to obtain an adequate diet, there was no starvation amongst them. It should be clearly understood that the greater part of the population of Bengal did not suffer from lack of food in 1943.

11. Those who found themselves unable to buy food reacted to the situation in various ways. Some remained in their villages and starved there. Many men left home in search of work, particularly on military projects, leaving their families behind. As things worsened, many thousands of people left their homes and wandered across the countryside in the direction of towns or cities where they hoped to obtain food. The existence in various urban centres of controlled food shops, at which rice was available at lower prices, and later of relief kitchens providing free food, encouraged the migration. The greatest flow was towards Calcutta. The Calcutta destitutes came mainly from the 24 Parganas, while nearly all the rest belonged to Midnapore and other districts not far removed from the capital. Many travelled by train without tickets and stations on railway lines south of Calcutta were thronged by starving crowds waiting for transport. Some destitutes living in villages near Calcutta came daily by train to the city to obtain food at relief kitchens and returned home by night. Migration of destitutes towards other centres in Bengal also occurred, though on a smaller scale. No figures are available as to what proportion of the population affected left home. While many thousands migrated, it is probable that the majority of famine victims remained in their villages.

12. Famine and migration led to much family disintegration. Husbands deserted wives

and wives husbands; elderly dependents were left behind in the villages; babies and young children were sometimes abandoned. According to a sample survey carried out in Calcutta during the latter half of 1943, some breaking up of the family had occurred in about half the destitute population which reached the city.

13. The famine-tricken population made little attempt to loot food shops and stores, and there was no organized rioting. The lack of violence can be explained in various ways. In general, famine victims belonged to the poorer classes and were accustomed to accept misfortune passively. The migrating crowds came from different villages and there was no corporate spirit amongst them to initiate any concerted move to obtain food by violent means. Lastly, and most important, the famine victims were soon reduced to a state of debility which prevented vigorous action. There was a very serious rise in the number of dacoities reported in Bengal in 1943. The thefts of rice, particularly from boats, were very common and in certain areas its transport was attended by considerable risk. It appears, however, that the dacoits were not in general famine victims but usually ordinary thieves taking advantage of the prevailing situation. Rice had become a very valuable commodity, selling at a high price, and hence well worth stealing. Violence and looting on the part of famine victims was thus not one of the problems with which the authorities had to deal. . . .

53. Failure to introduce rationing in Calcutta – End of 1943

B.F. Report (1944-5) (extracts), pp. 63, 94 and 104

E. Calcutta Rationing

24. In the earlier stages of the Bengal Chamber of Commerce Foodstuffs Scheme, the requirement of each participating employer were assessed by the employer himself and supplies were made by the Chamber accordingly. This continued till early in 1943, when because of the increasing difficulty in obtaining supplies, a greater degree of uniformity was brought about. The arrangement finally adopted was to supply employers grain shops with 5 seers of rice per week per head of the average daily labour force. An exception was made in the case of engineering works, including dockyards, and public utility concerns, where the supply was assessed at the rate of 7 seers per week per employee. This was considered necessary as the employers concerned were bound by an arrangement whereby each employee should be given, at controlled prices, the estimated requirements of each adult worker, one adult dependent and two children; and it was thought undesirable, in the interests of industrial peace, to reduce this below 7 seers except under conditions of extreme necessity. A further factor which justified the additional quantity was that the concerns which were supplied at the rate of 5 seers per week per employee included in their labour force a percentage of women entitled to draw their rations from the employer's shops. When this rice ration was decided upon no *atta* was available and it was not until early in May 1943 that *atta* became available in sufficient quantity to allow a cut of 50 per cent in the rice ration. There were also many occasions when, owing to the shortage of *atta* and rice, reduced issues had to be made by the Chamber to the participating employers' shops and by the latter to their employees with consequent discontent and hardship

J. Distribution of Supplies

53. Rationing was not introduced into Calcutta until 1944. During 1943 consumers made their purchases from three kinds of shops, ordinary retail shops, controlled shops, and employers' shops. Retail shopkeepers bought their supplies in the open market and their sales were not controlled as regards quantity or price. Everybody could buy grain in these shops provided he could pay the prevailing high prices. Controlled shops provided a limited supply, at prices subsidized by Government, to consumers who were prepared to undergo the discomfort of waiting in long queues. The employers' shops obtained their stocks partly from Government and partly by purchases in the open market. These shops provided a regular supply to about one million consumers at subsidized rates. Throughout the year a large proportion of the supplies arriving in Calcutta were brought in by private traders over whose transactions there was no control. They were free to sell to the highest bidder and there was no lack of bidders. They were also free to withhold stocks from sale if the prices offered were not according to their expectations. This was the position in regard to the distribution of rice in Calcutta during 1943.

54. Prices in the Calcutta rice market govern rice prices throughout Bengal. In the absence of control by Government over the distribution of the rice supplies reaching the Calcutta market on private account during 1943 – and given the shortage of supplies in Bengal – it was inevitable that the pace for the rise of rice prices throughout Bengal should be set by the purchasing power of consumers of the 'priority' classes in Calcutta. The city was prosperous and the purchasing power was large. Many persons could afford to pay high prices for the supplies required for their own domestic consumption and for that of their servants and employees. The Excess Profits Tax afforded a means whereby a large proportion of the cost of supplying the industrial labour force with food at subsidized rates could be passed on to Government revenues. The cost of feeding other categories of the 'priority classes' at subsidized rates fell directly on the revenues of the Central Government, the Provincial Government, or the Railways. It was therefore, possible for Calcutta to pay a price for rice which was beyond the reach of large classes of the population in the rural areas . . .

[Omitted: Remainder of Chapter X, what follows is from Chapter XI – Ed]

3. *The Government of Bengal* – When the price of rice rose steeply in May and June 1942, the Government of Bengal endeavoured to bring the situation under control by the prohibition of exports and by statutory maximum prices. In the absence of control over supplies, price control failed, but by September 1942, supplies and prices appeared to have reached a state of equilibrium. This month was a critical one in the development of the famine. If the Government of Bengal had set up at that time procurement organization, the crisis, which began about two months later, would not have taken such a grave turn.

With the partial failure of the *aman* crop at the end of 1942, the supply position became serious and prices again rose steeply. If a breakdown in distribution was to be averted, it was essential that Government should obtain control of supplies and prices. The measures taken by the Government of Bengal to achieve control of supplies and prices during 1943 were inadequate and, in some instances wrong in principle. In January and February 1943, the Provincial Government endeavoured unsuccessfully to obtain control of supplies and to regulate prices by means of procurement operations. Better success would have been achieved if procurement had been undertaken by an official agency instead of the agents chosen from the trade, and if Government had made it clear that they would not hesitate to requisition from large producers as well as from traders in case supplies were held back. The decision

in favour of 'de-control' in March 1943 was a mistake. In the conditions prevailing in Bengal at the time, it was essential to maintain control; its abandonment meant disaster. We refer to this matter again in the immediately succeeding paragraph. The Government of Bengal erred in pressing strongly for 'unrestricted free trade' in the Eastern Region in May 1943 in preference to the alternative of 'modified free trade'. The introduction of 'unrestricted free trade' was a mistake. It could not save Bengal and was bound to lead to severe distress and possibly starvation in the neighbouring areas of the Region.

One result of the policy underlying 'de-control' and 'unrestricted free trade' was that the greater part of the supplies reaching Calcutta was not under the control of Government. So long as this policy was followed it was not possible to introduce rationing in Greater Calcutta. Even after the policy was reversed, there was considerable delay in introduction of rationing. The absence of control over the distribution of supplies in Calcutta and the failure to introduce rationing at any time during 1943 contributed largely to the failure of control over supplies in the province as a whole.

The arrangements for the receipt, storage, and distribution of food supplies despatched to Bengal from other parts of India during the autumn of 1943 were thoroughly inadequate and a proportion of the supplies, received during the height of the famine, was not distributed to the needy in the districts, where such food most required. Better arrangements for the despatch and distribution would have saved many lives. . . .

54: Creation of the All India Save the Children's Committee

Annual Report, All-India Women's Conference (Seventeenth Session) Bombay
April 7, 1944 to 10, 1944

July 1943 saw the culmination of the food crisis in Bengal which resulted in the terrible famine. The President and the Honorary General Secretary toured the affected areas on two occasions to devise a scheme of relief work.

The Calcutta Branch issued an appeal to all our Branches for help and the sum of Rs 60,000 was received. Besides this, some of the Branches sent donations to other relief organisations which were already functioning in Bengal.

The Calcutta Branch and the Branches in the districts were responsible for starting milk centres for infants and nursing mothers, gruel kitchens and medical relief.

The attention of the President was drawn to the helpless condition of thousands of destitute children in the famine areas. A scheme for starting children's homes was immediately undertaken. A central fund called Save the Children fund was started. This name was subsequently changed to All-India Save the Children Committee as an organisation called 'Save the Children fund' was already in existence in Geneva with Branches in London and New York.

The first meeting of this Committee was held in Calcutta in February 1944 and the following office-bearers were elected:

President: Shrimati Vijaya Lakshmi Pandit.

Secretary: Mrs Urmila Mehta.
Treasurer: Mr Nalini Ranjan Sarkar.

In response to the President's appeal large sums of money were received both in India and from China, America and Britain.

55: Addl. Secretary Govt. of Bengal to all District Officers — On evils of hoarding, profiteering and pilfering

Govt. of Bengal (Home) File No. W/58/43
[Bengal State Archives]

Government of Bengal

From
Addl. Secretary.

All District Officers, Commissioner of Police, Calcutta,

Subject: Mobilization of public opinion against the triple evils of hoarding, profiteering and pilfering.

Reference: This Department circular Memorandum Nos (1) Nos 309 P.S. dated the 15th February 1943, (2) 1280 P.S. dated the 11th August 1943, (3) 1516 P.S. dated the 20th October 1943, (4) 1730 P.S., dated the 4th December 1943.¹

The 6th January 1944.

Government have already drawn your attention to the judgement of the High Court of the 10th November 1943² enhancing the sentences awarded in a number of hoarding cases which came before it, you have also been requested to ensure that different sentences are awarded to all persons convicted of offences of this nature as well as in cases of pilfering of military stores, etc.

2. The undersigned is directed to say that, with a view to mobilizing public opinion against the triple evils of hoarding, profiteering and pilfering, it is equally important to secure prompt and effective publicity for cases in which heavy sentences have been awarded. The Director of Public Information, Bengal, should therefore be supplied direct with prompt reports of such cases. Some reference to the results of cases of this kind should also be included in your Fortnightly Confidential Reports.

A.E. Porter
Additional Secretary.

1. Not printed.
2. Doc. 48.

56

Minute of the War Cabinet meeting

The Transfer of Power – Vol. IV, Doc. 320

War Cabinet W, M (44) 5th Conclusions, Minute
L/PE/8/652: FF 141-4

Those present at this meeting held at 10 Downing Street, S.W. I, on 11 January 1944 at 10.30 a.m. were: Mr Attlee (in the Chair), Mr Anthony Eden, Sir John Anderson, Mr Ernest Bevin, Mr Oliver Lyttelton, Mr Herbert Morrison, Lord Woolton, Mr R.G. Casey.*

Also present during discussion of item I were: Viscount Simon, Viscount Cranborne, Mr Amery, Sir James Grigg, Sir Archibald Sinclair, Sir Stafford Cripps, Lord Cherwell.

India

Situation in Bengal

The War Cabinet considered the following:

A Memorandum by the Secretary of State for India (W.P. (44) 18) covering an exchange of telegrams with the Viceroy in which the view was strongly expressed by Lord Wavell that the Bengal situation could only be safeguarded, and a danger of recurrence of famine avoided, if the Ministry were dismissed, and government by the Governor by proclamation under Section 93 of the Government of India Act was established.

A further exchange of telegrams (657 to the Viceroy and 64-s from the Viceroy); and

A further memorandum by the Secretary of State for India (W.P. (44) (20)4) covering a draft of the statement which it would be necessary to issue if the Viceroy's proposal were approved.

THE S./S. FOR INDIA said that, in his telegrams, the Viceroy had made it clear that by whatever means, the responsibility for control of the food situation in Bengal must be taken out of the hands of the Ministry. In his telegram 38-55 of the 6th January the Viceroy discussed five methods which had been suggested as theoretically possible, and explained his reasons for favouring the adoption of the fifth method – the dismissal of the Ministry for failure to take the necessary food measures, accompanied by the issue of a proclamation under Section 93 by the Governor assuming to himself the powers of the Ministry.

In support of the view that drastic action of some kind was necessary, the S./S. gave a number of instances, in the sphere of public health, to illustrate the inability of the Government of Bengal to carry out their responsibilities in times of crisis. He was advised that some 50 per cent of this year's grain crop would really be marketed during the next three months, and that there was a grave danger that, if the Ministry remained in control, they would not take the action necessary to ensure that a considerable proportion of the crop did not go underground.

It was clear, however, that the application of Section 93 would have grave repercussions. It was true that there would be no legal way in which the Governor's decision to apply the Section could be challenged. The Ministry could, however, protest on the grounds that the action had been taken because present Ministry was a predominantly Moslem League government, and might lead both to unrest in Bengal and to the resignation of Moslem League Governments in other Provinces. This step should not, therefore, be taken unless it was really necessary, in order to avoid the recurrence of famine.

No doubt it was a serious matter to reject the Viceroy's considered opinion. Secretary of State wondered, however, whether the necessary results might be achieved by a combination of the first two methods discussed in Lord Wavell's telegram No. 38-S—namely, a decision by the Governor that the circumstances were such that his special responsibility under administration, which would enable him to override the Ministry as he thought fit; and the use by the Central Government of its powers under Section 126A.

In conclusion, the Secretary of State read out a telegram No. 79-s in which the Viceroy reported that he had not discussed the proposed application of Section 93 with his Executive Council, but gave an estimate of their views as indicated by their comments on reports regarding the food situation in Bengal. The general conclusion reached by the Viceroy was that the majority of his Executive Council would favour the proposed action, but that the Indian members, including Hindus, would not wish to be associated with it and would expect him to take entire responsibility.

The Chancellor of the Exchequer (John Anderson) said that Lord Wavell had evidently formed a very unfavourable opinion of the efficiency of the Bengal Government. The War Cabinet had not, however, been informed of the considered views of the senior officers serving in the Province.

The Chancellor of the Exchequer referred to the instances mentioned by the Secretary of State and those cited in telegram 38-s, as to the ineffectiveness of various officials in the Bengal Province. He said that it would appear that the responsibility for several of the appointments in question rested with the Centre, and not with the Provincial Government. If the Government of India in justification of the use of Section 93, were to rely on some of the instances of inefficiency which had been cited to the War Cabinet, he thought that they might find themselves on very insecure ground.

The Chancellor of the Exchequer said that, in his view, the Governor of Bengal could clearly exercise his individual judgment in matters affecting the supply of food or the health of the people, as being matter which were closely bound up with good Government. Moreover, it was important to bear in mind the procedure when a Governor decided to exercise his individual judgment in regard to a particular matter. It was not the case that the Minister concerned first carried (came) to a definite conclusion and then submitted the matter for further consideration by the Governor. In practice, what happened was that the Minister consulted with the Governor before deciding what action should be taken, and no question arose of the Minister being formally over-riden by the Governor. Moreover, all orders were issued as Government, and there was nothing to indicate that certain orders were issued as a result of the Governor exercising his individual judgment. The whole arrangement thus worked quite smoothly.

If, on the other hand, recourse was made to Section 93, and the present Government was dismissed, the Hindus would be delighted. More of the Moslems would stand back and do nothing, and some would be actively hostile. In the result the Government of Bengal would be left without friends.

It was a serious matter to over-ride the Viceroy's considered judgement, but the Chancellor of the Exchequer suggested that, in any event, the newly-appointed Governor should be given time to find his feet and to establish relations with the Government of Bengal. If, after experience of trying to work with the Bengal Government, Mr Casey found that it was impossible to carry on, the question of recourse to Section 93 could always be considered. But he sincerely hoped that Mr Casey would find it possible to work through the Ministry, on the lines which he had suggested.

The Secretary of State for War expressed agreement with these views. He felt sure that, even

if the existing Ministry were dismissed, it would not be possible to produce a really effective organisation at all quickly. In his view, the use of Section 93 would probably result in worsening the position in Bengal. He did not favour dismissing the Bengal Government except for explicit refusal to carry out clear-cut orders.

The Secretary of State for War also referred to a report in *The Times* that morning according to which the views of the Centre were prejudiced in the eyes of the Bengal Ministry, by the fact that they happened to coincide with those of the political opposition in Bengal. This might have serious political consequences.

The Lord Chancellor was opposed to the use of Section 93 at this juncture, which he would regard as an extreme step. He quoted the terms of section 52-(1) (a) of the Government of India Act, and thought that the acting Governor of Bengal was wrong in thinking that the present situation in Bengal was not sufficient to justify him, under this Section, on exercising his special responsibility in food and health matters.

The Foreign Secretary also expressed agreement with the views of the Chancellor of the Exchequer.

The Minister of Air Craft Production was of the same opinion. In his view the use, at this juncture, of Section 93 would create the worst possible impression, at the time when the new Governor of Bengal took over. It would make the whole province hostile to us. Moreover, he did not feel that case had been established which would justify recourse to Section 93 against the present Government. Responsibility for most of the matters referred to seemed to rest with the previous Government of Fazlul Huq.

Mr Casey agreed that it was a serious matter to overrule the Viceroy's considered judgment, but favoured an effort to work through the existing Government, rather than to break with it. He referred, in this connection, to the need for making the best use of all available resources, including those from outside Province.

The Chancellor of the Exchequer in this connection suggested that as many as possible of the members of the I.C.S., now serving the Centre, who had previous service in Bengal, should be made available for service in Bengal during the present emergency.

The War Cabinet's decisions were as follows:

- 1) Of the five methods of removing food from Ministerial control, set out by the Viceroy in Telegram 38-S of the 6th January, the war Cabinet rejected (3) — amendment of the Constitution Act — and (4) and (5) — the application of Section 93 to the Bengal Government.
- 2) The right line of action was for the Governor to decide that the circumstances were such that his special responsibility was attracted under Section 52-(1) a of the Government of India Act in regard to food and health administration (the Viceroy's course (1)) as well as in respect of the proper execution of directions from the Central Government under Section 126A.
- 3) In communicating this decision to the Viceroy reference should be made to the methods and procedure whereby the Governor of a Province would normally exercise his special responsibilities, as explained by the Chancellor of the Exchequer.
- 4) The Secretary of state for India was invited to prepare a telegram to the Viceroy setting out the War Cabinet's views. This telegram should be shown to the Deputy Prime Minister and Chancellor of the Exchequer and, subject to their concurrence, should be despatched without further reference to the War Cabinet.

57: Secretary of State for India (London) to the Viceroy

The Transfer of Power – Vol. IV, Doc. 322

Mr Amery to Field Marshal Viscount Wavell
Telegram, L/PE/8/652: FF 147-9

India Office, 12 January 1947, 3.30 p.m.

Immediate

936. Bengal Situation.

1. War Cabinet have given earnest consideration to your recommendation in favour of immediate recourse to section 93. They fully recognize the strength of the case you have put forward and the weight of our responsibilities. But they are definitely of the opinion that the case for enforcement of section 93 against the present Bengal Ministry is not strong enough to outweigh the grave political objections as well as the communal repercussions which might seriously handicap a new Governor at the start and contribute to defeating his efforts.

2. They feel that present Ministry if dismissed would have a plausible and indeed strong case for complaining that they have been sacrificed for the failure of their predecessors as well as to the clamor of their political opponents, without being given a fair chance to set their house in order. Hindu rejoicing at the discomfiture of a Muslim Government would not mean active help to the new administration, which might have to begin with everybody's hand against it, since it is to be apprehended that supporters of former Ministry might show their resentment by engineering obstruction at all levels especially in Eastern Bengal. This apart from wider repercussions in Muslim India or outside. . . .

58: Anti-communists against *Aman* procurement scheme

Govt. of Bengal (Home) File No. 45/44
[Bengal State Archives]

Directorate of Civil Supplies, Bengal 7, Church Lane,
Calcutta, 14th January 1944

Secret. D.O. No. 298 D.C.S.

My dear Porter,

As you are aware, the Anti-Communist Bloc has, according to reports received, decided to make a major issue of the *Aman* procurement Scheme. They have accordingly undertaken a propaganda campaign designed to secure the failure of the scheme. The main theme of this

propaganda is that the aim of the *Aman*-Scheme is to deny supplies of foodgrains to the Japanese in the event of a division of a part or whole of the Province: in this event Government would either destroy the crop in pursuance of a scorched policy or remove the stocks to another province; the people would starve in either case. Agriculturists are, therefore, called on not to surrender their stocks of rice and paddy to Government Agents but to conceal them or distribute them among the people of their locality. This campaign, if successful, would clearly and seriously prejudice the success of the *Aman* Scheme.

2. We are taking steps to combat the campaign by means of counter-propaganda through the agency of the National War Front and Ishaque's village food committee organisations. We would however, like the question of punitive action also to be examined. Any action likely to impede the supply or distribution of any essential commodity would appear to be a 'Prejudicial act' as defined in rule 34 (6) of the D.I. Rules. Would it be possible in the circumstances for your Department to instruct the police to follow up specific case of prejudicial acts of this nature with a view to obtaining convictions in suitable cases under the D.I.Rs.⁴¹

Yours sincerely,

Signed, illegible

A.E. Porter, Esq., CIE, ICS,
Addl. Secy., Home Dept.

Instructions to the Police Dept. (below)

Government of Bengal.

To

The All Dists Supdts of Police, Bengal.

Subject: Propaganda campaign to secure the failure of the aman procurement Scheme, by the Anti-Communist Bloc

The 22nd January, 1944

Memo

According to reports received, opposition elements have decided to make a major political issue of the aman procurement Scheme. They have accordingly undertaken a propaganda campaign designed to secure the failure of the scheme. The main theme of this propaganda is that the aim of Government's aman procurement scheme is to secure the crop for the military and upon any indication of an invasion either to destroy or remove it. In either case the people would starve and this is represented as being a part of Government's policy. Agriculturists are, therefore, called upon not to surrender their stocks of rice and paddy to Government agents but to conceal them or distribute them among the people of their locality.

2. Government are taking steps to combat the campaign by means of counter propaganda through the agency of the National War Front and Village Food committees. If successful, however the campaign would clearly and seriously prejudice the success of the aman procurement scheme, and it consequently appears to Government that propaganda along these lines, being intended or likely to impede, delay or restrict the supply and distribution of an essential commodity, amounts to a 'prejudicial act' as defined in rule 34 (6) (h) of the Defence of India Rules. The undersigned is accordingly directed to convey the instructions of Government that specific cases in which prejudicial acts of this nature have been committed, should be followed up with a view to prosecution and conviction in suitable cases under the Defence of India Rules. Government, however do

not desire any prosecution to be launched for any speech delivered before 24th January, before which date the press and party leaders will be informed of Government's view of this agitation.

Copy forwarded to

Addl. Secy.

- (1) All District Officers.
- (2) Commissioners of Divisions.
- (3) S.G.B.
- (4) Chief Presidency Magistrate, Calcutta.
- (5) Judicial Deptt.
- (6) Publicity Deptt.
- (7) Home (Police) Deptt.
- (8) C.L. & I Deptt.
- (9) Agriculture & C.C.R.I. Deptt.
- (10) Home (Defence) Deptt.
- (11) Deptt. of Civil Supplies, Bengal.
- (12) I.G.P., Bengal.
- (13) C.I. Calcutta.

Addl. Secy.

For Information.

59: Shipment of food grains to India

The Transfer of Power – Vol. IV, Doc. 347

War Cabinet Paper W.P. (44) 63

L/E/8/3322: FF 15-17

India **Shipment of Food Grains to India** Memorandum by Secretary of State for India

India Office, 28 January 1944

When the question of importing food grains into India was discussed in the autumn it was decided that the question should be reviewed again in the light of the Indian harvests. In November the Cabinet agreed to continue shipping supplies for the first two months of 1944 to give the necessary time to make available the facts for this review. Since mid-October 130,000 tons of barley have been shipped from Iraq and 80,000 tons of wheat from Australia 10,000 tons of wheat are being shipped from Canada and another 100,000 from Australia in January and February.

Estimates of the 1943-44 crops are set out in Appendix I. They indicate a promise of

improvement over last year in the rice crop of 3-3 1/2 million acres and an improvement of round about 2 million tons in yield. In Bengal alone the improvement may be even higher in proportion. As against this, lack of rain in the Punjab is threatening a partial failure of the wheat crop in the spring with unfortunate reaction on defence supplies, on urban rationing, especially in Calcutta, and worst of all on the co-operation of the Punjab Government and people in the Centre's efforts to secure an All-India food policy both in relation to supplies and price.

The present position, in relation to which these crop prospects have to be considered, may be summarized thus: Bengal.

In Bengal the harvesting of the new crop marks, for the time being at any rate, the end of actual shortage there. But famine is being followed by epidemic disease in the form of cholera and malaria, and the process of rehabilitation is obviously going to prove troublesome. Administrative and political weakness, brought to light by the famine and partly masked for the moment by military aid, have led the Viceroy to propose very drastic remedies which the War Cabinet have not been able to accept and the result overall is that the confidence of the people is badly shaken, the Viceroy has grave doubts of the possibility of coping with the administrative problems arising through the normal constitutional machinery, and the new Governor enters on a field where the recurrence of troubles comparable with those of last autumn forms a continuous threat. In the effort to secure the necessary restoration of confidence the Viceroy has accepted responsibility for 1944 for feeding Calcutta from sources outside Bengal. This involves a new charge of some 650,000 tons, half wheat and half rice on the rest of India.

The Rest of India

Meanwhile the rest of India has succeeded, notwithstanding the drain of relief supplies for Bengal, in holding its own against the threats of shortage which overhung Madras, Bombay and the Malabar States a year ago. Administrative machinery, including a growing measure of urban rationing, is working successfully in all three though Travancore and Cochin are causing some anxiety still. Price control and rationing in the surplus provinces, especially the Punjab, have only been achieved with much difficulty and their maintenance in adverse conditions is precarious. It is, in my view, a great achievement on Lord Wavell's part to have secured the Punjab's acquiescence in an All-India food policy. He has also had to take strenuous measures with the Sind Ministry.

[Omitted: Discussion on Defence, Economic Stability etc. — Ed.]

I am well aware of the difficulties involved. But in spite of them, and on the basis indicated above, I must press to the fullest extent the request that His Majesty's Government will authorize shipping for the quantities of wheat stated — a million tons this year for use and half a million for reserve, and for these quantities to be regularly supplied in accordance with a publicly announced undertaking. Lord Wavell has seen as much of the present food position as any man and has done as much to meet it and I quote his own words in support of this demand, telegraphed to me in the last few days:

Throughout 1944 I shall have a hard struggle to hold prices and to stave off shortages and actual famine. I may not be able to prove this to the satisfaction of the war Cabinet, but the facts are quite evident here. Please tell your colleagues that they have been warned.

L.S.A.

60: The Viceroy to the Secretary of State for India food situation in Bengal (extracts) dt 9.2.1944

The Transfer of Power – Vol. IV, Doc. 364

... 4. I am quite satisfied that on figures alone our demands are justified. But psychological aspect is of even greater importance. In every province I have visited there is insistence of opinion official and non-official that only hope of solving India's food problem is firm control by Central Government, and there is growing confidence in power of Central Government to do so, provided it has at its command substantial reserve of imported grain. This proviso has been made in every single instance. Announcement that such a reserve would be available would have an immediate and salutary effect on prices everywhere and would do more than anything to stabilize India's economy. On the contrary once it is known that His Majesty's Government is not prepared to help India, and I do not see how the fact can be concealed since amount of grain imports is a question closely studied, I fear that all our work at control of past months, which has had considerable success, will be lost, prices of grain and of all other commodities will rise, and situation may pass out of control.

5. I warn His Majesty's Government with all seriousness that if they refuse our demands they are risking a catastrophe of far greater dimensions than Bengal famine that will have irretrievable effect on their position both at home and abroad. They must either trust opinion of the man they have appointed to advise them on Indian affairs or replace him.

61: Extracts from Fortnightly Report from Bengal for the second half of February 1944

File No. 18/2/44 – Home Poll (I)

[NAI]

***Aman* Procurement Scheme**

12. There is still a good deal of underground opposition to Government's *aman* procurement plan, and in several districts leaflets are still being surreptitiously distributed urging the cultivators not to part with their surplus grain. A tendency is also evident in some quarters to belittle the work done by the Civil supplies Department and to forecast a second famine of greater severity than that of 1943. The main object of this agitation is undoubtedly political, and the danger is that it is likely to delay the return of confidence which is so necessary if normal conditions are to be restored. Arrangements are now being made to establish an Enforcement branch of the police, and it is hoped that this will go a long way towards checking hoarding and profiteering.



62: Extracts from Fortnightly Report from Orissa for the second half of February 1944

File No. 18/2/44 – Home Poll (I)
[NAI]

Reference has been made in the Press Adviser's report to the export of cattle by Military Contractors to provide food for the troops. This is a matter which has been causing the provincial Government the gravest anxiety, and it has been found necessary to impose restrictions on the export. The trouble is that military contractors are prepared to pay almost any amount for animals, and the result is that the poorer cultivators, who are hard hit by the present economic situation, are prepared to sell their plough-cattle at the high prices offered. Milkcows are also being sold in large numbers. If this continues, the effect on agriculture will be disastrous, and it will not be possible to keep under cultivation even land which is normally cultivated quite apart from land which has been brought under cultivation under the 'Grow More Food'. Large scale export has also made it difficult to meet local demands from military and Air Force units stationed in Orissa. A conference has been called by H.C. Western Command to discuss the situation and a representative from this province has been sent to attend; but it is doubtful whether this province will be able to do much to help in the way of large exports of cattle.

63: Report of the All India Save the Children Committee – (End of 1943)

Annual Report
All India Women's Conference (18th Session 20.12.1945)

Mrs Urmila Mehta, Hon. Secretary

The All-India save the Children Committee was formed in 1943, to have children who were rendered homeless and destitute due to the havoc wrought by flood and famine in the provinces of Bengal, Orissa and Malabar etc.

Smt Vijaya Lakshmi Pandit, who was then the president of the 'All-India Women's Conference and I (who was then the Hon. General Secretary) visited and toured the famine stricken area in Bengal in 1943, and saw the appalling conditions there at first hand. The situation was very grave and Smt Vijaya Lakshmi Pandit appealed for funds to provide shelter for the homeless and starving children. In response to her appeal a sum of about 250,000 were collected. A scheme of starting homes for these children was taken in hand. The scheme was a ten-year plan; the children were to receive basic education, and each home was to shelter at least 50 children. It was also decided to run homes in Malabar and Orissa in co-operation with the Servants of India Society. In Bengal our Branches had already started the work in this direction and so the homes for children already started by them were taken

over by the A.I.S. children committee and a Provincial Committee was appointed. This provincial Committee directly supervises over the homes run by us in the Province. There are five centres in this province and 338 children are being cared for in the homes conducted by us;

| | |
|--------------|--------------|
| Bhola | 113 Children |
| Bankura | 63 Children |
| Behala | 58 Children |
| Brahmanbaria | 50 Children |
| Mymensingh | 54 Children |

The Bengal Provincial Committee is considering the amalgamation of the homes in the last two centres. I visited these homes in the beginning of December this year. All the homes, excepting the one at Mymensingh have Basic trained teachers. Children are well cared and are happy. The main basic crafts taught in these homes are spinning, weaving, gardening, carpentry, cane and bamboo basket making, etc. In Bhola they have acquired a plot of land and built thatched (kutchra) huts for the home. The All-India Save the Children Committee is making a monthly grant of Rs 6,000 to the Bengal Provincial Committee for up-keep of these homes.

Here I would fail in my duty if I did not say a word of appreciation for the splendid work, Dr Maitreyi Bose, Hon. Secretary of this provincial Committee has done and is doing for these homes.

In pursuance of the decision of the A.I.S.C. Committee to work in co-operation with the Servants of India Society, the management of the Homes in the Provinces of Orissa and Malabar has been left in the hands of the Servants of India Society, though the members of our Committee inspect these homes from time to time. I visited the home in both provinces in October 1944 and I have since made suggestions after placing the report of my tour before the A.I.S.C. Committee that these homes should be run strictly in accordance with the ideals laid down by the A.I.S.C. Committee. The Servants of India Society have their homes at the following centres:

| <i>Orissa</i> | | <i>Malabar</i> | |
|--------------------------|-----|----------------|-----|
| 1. Shishu Sadan, Kumcha | 30 | 1. Payangadi | 36 |
| 2. Shishu Sadan, Cuttack | 29 | 2. Dharmada | 17 |
| 3. Shishu Sadan, Rambha | 42 | 3. Thekkot | 20 |
| 4. Nari Sadan, Soro | 34 | 4. Gopalpuram | 28 |
| 5. Shishu Sadan, Jaipur | 65 | 5. Erantipalam | 47 |
| | 200 | | 148 |

A monthly grant of Rs 3,000 is being made to the Servants of India Society for the up-keep of these homes in both the Provinces.



64 Extracts from Fortnightly Report from Bombay for the second half of March 1944

File No. 18/3/44 - Home Poll (I)

[NAI]

An unusual development in Bombay is the formation of what is known as the people's Provincial Food Council. At the invitation of Mr M.R. Masani, Mayor of Bombay, some 110 persons from various districts of the province attended a conference on the 19th March and decided to form the Council. Its aims and objects are stated to be to watch the working of the food policy of the Government of Bombay, to consider ways and means of increasing food production, to consider the food situation from the point of view of adequate nutrition and to collect data regarding food requirements. The Council claims to be and is in fact surprisingly non-party and non-sectarian in composition. The members include Sir Homi Mody and Sir Manilal Nanavati, Mr Chundrigar, President of the Provincial Muslim League and Sir Ali Mahomed Khan Dehlavi, Leader of the Muslim League Party in the Assembly, Congressmen, such as Mr Mavalankar, Speaker of the Assembly, Miss Mridulaben Sarabhai and Mr Soman of Satara and well known loyalists, such as Sir Dhanjishah Cooper. It is not easy to explain away the association of such widely different political groups by saying, as one intelligence report from Bombay does, that the real object of the Council is the rehabilitation of Congress policy and the issue of anti-Government propaganda in the sphere of food. What is far more probable is that there are many people in different political parties who are genuinely anxious that the tragic mistakes of Bengal should be avoided, but not all of them are willing to be publicly associated with bodies set up by the present administration.

65 Extracts from Fortnightly Report from Bengal for the second half of March 1944

File No. 18/3/44 - Home Poll (I)

[NAI]

In Rajshahi communists and adherents of the Muslim League are said to have joined forces to capture the Food Committee recently set up by the Civil Supplies Department, while from Jalpaiguri and Rangpur come reports that members of the Communist party are staging dramas on the food situation in a way likely to cause alarm and disaffection. The Commissioner says that they are being warned and that some of the performances are being banned.



66: Extracts from Fortnightly Report from Orissa for the second half of March 1944

File No. 18/3/44 – Home Poll (I)

[NAI]

The food situation in the province and the possibility of shortage later in the year still occupies a prominent place in local newspapers. The *Samaj* quoted the Hon'ble Pandit Kunzru as stating in the Council of state that more foodstuffs should not be exported from Orissa, and asks the Orissa Government and the members of the Assembly to take heed and think of remedial measures. The order recently passed by the Provincial Government under the Defence of India Rules prohibiting public meeting and processions in connection with the Government's food policy without the previous permission of the District Magistrate has been criticised in the vernacular press. Criticism by members of the Orissa legislative Assembly in the recent session have been quoted, and the *Samaj* quoted a letter by the Secretary of the Utkal Communist Party to the effect that this order will only benefit profiteers and hoarders. The logic of this is not very clear, since it was fully explained by the Hon'ble Prime Minister in the Assembly that the order was directed against the type of speech which was freely made six months ago and which only result in lack of confidence in the scheme and in hoarding which is one of the main cause in local scarcity.

67: Extracts from Fortnightly Report from Madras for the second half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

Communists also continue their collections for 'Bengal relief' and take every chance to exploit the food situation. A striking example of their opportunism is reported from Nellore where they have been busy holding meeting requesting Government to introduce rationing soon. They know perfectly well that Government will introduce rationing shortly as the preliminary enumeration has been completed and they obviously wish to claim all the credit when it comes in.

68: Extracts from Fortnightly Report from Bengal for the second half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

A copy of *Inquilab* pamphlet forecasts another famine in Bengal owing to the inflation which is being 'recklessly indulged in' by Government. The pamphlet also argues that the British

deliberately denuded Bengal of foodstuffs so that the people would die and hoped that the blame for this would fall upon the Japanese after their entry into India. A book entitled 'War against the People' by Kalyani Bhattacharya, which also accused Government of having purposely created the famine was proscribed during the fortnight.

69: Extracts from Fortnightly Report from Orissa for the second half of April 1944

File No. 18/4/44 – Home Poll (I)

[NAI]

Both the Communists and the Servants of India Society are spreading the view that another 'man-made famine' is approaching, and they are ever ready to make capital out of any temporary shortage.

70: Extracts from Fortnightly Report from Bombay for the second half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

'The Gujarat Food Committee' referred to in my last letter¹ has instructed its members to tour villages with a view to collecting information in connection with the recent orders of Government regarding the compulsory growing of more foodgrain crops.

¹ Not printed

71: Extracts from Fortnightly Report from U.P. for the second half of June 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

There has been a little variation in the price of *Rabi* foodgrains. The price of wheat generally remains at or near the maximum statutory price of Rs 10 a maund, whilst gram and barley are well within the selling prices. The arrivals of wheat, however, continue to be very disappointing. Arrivals were partially affected by early rain, but the tendency to hold on to stocks in the rural areas is becoming increasingly apparent. The poorness of arrivals has naturally adversely affected Government purchases which will now have to continue throughout the rains, a season in which at one time it was hoped to avoid buying.

72: Central Government indicted for weakness of its basic plan (before Aug. 1944)

H.B.L. Braund's Memo (extracts) File No. 57/1944 Nanavati Papers
[NMML]

Chapter II

The Formation of the Food Department of the Government of India and the Basic Plan

15. The Food Department was formed in December 1942, after India had been at war with Japan for a full twelve months. During that time the signs of approaching food difficulties had multiplied themselves. In England a special branch of the Board of Trade had been set up as early as 1936 to prepare plans for feeding the country in case of war. This branch in good time became the Ministry of Food, and it employed between thirty and forty thousand capable men and women. The whole machine was prepared and ready, down to the last detail to come into effect on the day war was declared. In India it took a year after war with Japan broke out to start the Food Department, and it was not until July 1943 that this Department acquired a separate Minister of its own. Within three weeks of the Food Department being formed, the first All India Food Conference was held in Delhi. At this conference there were indications that the Provincial governments were determined to preserve the powers they had obtained.

16. The 'Basic Plan' was the challenge of the new Food Department of the Government of India to the All-India problem with which it was confronted. It was, notwithstanding its shortcomings and its ultimate failure in the Eastern Region, a bold and energetic attempt to tackle a problem of unprecedented magnitude, " attempt to deal with a situation which had been allowed to drift too long and to create an All-India plan in the face of a growing lack of confidence and of increasing provincial resistance.

17. So far as the Eastern Region is concerned, the history of the 'Basic Plan' can possibly be dated from the 10th of March 1943, the date on which the writer of this note became the Regional Food Commissioner in the Eastern Region and on which date a conference was held in Government House Calcutta, under the auspices of the Hon'ble Somerset Butler who had been sent down from Delhi.

The minutes of this important meeting—both the official minutes and the writer's own note from which in part the minutes were compiled are added as appendix C¹ to this note. The condition to which Bengal, and in particular Calcutta, had been reduced by the beginning of March is disclosed by the opening statement of Mr Pinnel, who was then the Director of Civil Supplies in Bengal. He anticipated a bad crop and that speculative buying had started. Then the air-raids came and Bengal had been forced to do what it said it never would do, namely to requisition, in a deficit area, that is to say in Calcutta. This had been followed by attempts by the Bengal Government to fix maximum prices, to prevent competitive buying by restricting movement, and to buy direct. Notwithstanding these steps — or, perhaps, as a result of them — the position had been reached at which Calcutta would be reduced to starvation in fourteen days if nothing was done. Prices had reached from Rs 20 to Rs 22 a maund, and stood at famine levels in the Districts. This impressive statement was made by Mr Pinnel, a most experienced officer not only of Bengal but of the Government of India. Mr Pinnel attributed

much of the damage that had been done to the policy of maximum prices imposed upon a situation in which the people were already thoroughly alarmed. The Government of India representative told the conference that 'the Government of India was not as yet prepared to admit that Bengal would be a deficit province, but, if it should later on be proved that Bengal was this year deficit, the stocks at present in the province must be ample to feed the province for some months to come. The Government of India felt that the present position in Bengal was a purely artificial one . . . '

However 'artificial' the position at that stage may have appeared to the Government of India, it was a very real one so far as Bengal and Calcutta were concerned, with the largest city in the Empire, and the major portion of India's Industrial war effort to be provided for and with the war itself on its frontiers developing day by day. The actual object of this conference was to meet this most alarming position by obtaining, if possible, from Assam, Bihar, Orissa, and the Eastern States an immediate and moderate infusion of rice into Bengal to the extent of 15,000 tons each or 60,000 tons in all. This was an attempt to revert in the Eastern Region, on a sudden call for help, to the position which as Chapter I has mentioned, had been destroyed by the erection of provincial boundaries. The amounts asked for were trifling in relation to the resources (on any footing) in each of these provinces and the Eastern States. The interesting thing is to observe the reaction of the Provinces to this request. The reaction from Bihar was this. Their representatives were apprehensive lest the effect of purchasing rice in Bihar for Bengal might not secure some undertaking from the Government of India that the province would be compensated for any rise in price. They pointed to the worthlessness of Bihar's statistics and contended that Bihar itself was a deficit province. They said that they were unable to engage themselves to produce 15,000 tons within a short period, but suggested that they might, after consultation with their Government, be able to produce the quantity desired to meet the emergency *pari passu* with the needs of their own deficit districts. The results of the consultation between the Bihar representatives and their own Government are to be found in a letter dated the 14th March 1943² written by them to the Hon'ble Somerset Butler immediately after returning to Patna. The effect of it was that the attempt to collect 15,000 tons would be 'the last straw' which would break the back of Bihar. But they said they might be able to make some smaller contribution if 'first of all we can satisfy the essential demands of our own deficit areas'. A copy of this letter is appended to this note as appendix D.³ Assam also, in view of its commitments to the Army feared an increase of price. Though there was no formal refusal on the part of Assam to furnish the amount required at enhanced prices, in fact, I believe, nothing was actually sent. Of three provinces, the attitude of Orissa was refreshing. Subject to some question as to the time within which it could accomplish it, Mr Taylor representing the Orissa Government, undertook to do his best, and as will presently appear, the Orissa Government in fact produced and sent into Bengal, not merely 15,000 tons, but something over 20,000 tons. This gesture on the part of the Government of Orissa at a very critical period is one which should be remembered with gratitude both by the Government of India and by the Government of Bengal. The Eastern States Agency stood on a somewhat different footing. Its own requirements were small and its surplus was undoubted. The question there was to create a purchasing organization to make the actual purchases. It is worth noting that Messrs. H.K. Dada, one of the very biggest grain dealing firms in India, were appointed by the Hon'ble Somerset Butler for this purpose, but for reasons which it is difficult to explain, the procurement which they effected in the Eastern States was almost negligible. I have always

attributed the reason for this to the fact that the terms they were offered were insufficiently attractive to make it worth their while.

18. This call for help for Bengal I have always regarded as the forerunner of the 'Basic Plan' although the 'Basic Plan' had already been conceived. In the result, except the case of Orissa, the actual results of the March conference in Calcutta were negligible. Nothing, I think, was ever sent by Assam and very little by Bihar. From the Eastern States, owing to the complete failure of the procurement arrangements, practically nothing came. As a result of the goodwill of the Orissa Government and arrangements made in Cuttack by the Regional Commissioner and Mr R.H.D. Campbell of Messrs. Shaw Wallace & Co., the Orissa Government despatched into Bengal in six weeks not less than 20,000 tons of rice. That, to all intents and purposes, was the sole result of the Conference of the 10th-11th March in Calcutta.

19. The effect of this on the position of Bengal and in Calcutta was negligible. The position went from bad to worse and, in Calcutta, had it not been for the efforts of the Bengal Chamber, which had undertaken to feed the bulk of the industrial population, it is probable that the most serious consequences would have ensued. The position of Calcutta itself will be referred to again when we come to the introductory phases of free trade. This reference to the increasing difficulties of Bengal and Calcutta and to the abortive attempt to obtain immediate assistance from the surrounding Provinces has been mentioned here only in order to give some idea of the atmosphere in which the Government of India's preparations for the 'Basic Plan' were proceeding.

The scheme of the 'Basic Plan' was introduced by a letter from the Government of India to all Provincial Governments and Chief Commissioners. It set out the embryo scheme in a schedule which outlined principles of controls and administration, the relations between the Centre and the principles governing procurement, and a number of more technical matters such as statistics, terms of business of purchasing agents, inspection and distribution arrangements. Though it would be unfair not to appreciate the magnitude and boldness of its conception, one is struck by its somewhat unrealistic outlook when one reflects that it was a plan to deal with the problem of the food of four hundred million people, scattered over a subcontinent and traditionally fed by an intricate system founded on petty trade and the patchwork cultivation of millions of small cultivators. The Government of India itself was at this stage 'shy' of a system of price control in primary wholesale markets. The plan had no special reference to Bengal because Bengal had not at that stage been recognized as a deficit province. The 'Basic Plan' was an All India affair and it had the merit of simplicity. It sought to find out as far possible what food grains were available and to distribute them to the best advantage in the places where they were needed most. But its weakness was that it had perforce to rely for its effect on a sense of responsibility and goodwill in provinces and upon administrative resources, which, in the Eastern Region, did not exist. The plan first called upon provinces and States to declare their surpluses and deficits. It called upon the 'have' to declare what they had, and upon the 'have nots' to declare the extent of their needs. The result was that the 'haves', like mother Hubbard, disclosed bare cupboards, all previous statistics notwithstanding. The 'have nots' opened wide their mouths. And so began a wrangle between the Government of India on the one hand and Provinces, in the first place frightened and obstinate and finally angry, on the other hand, which killed, so far, at least, as the Eastern Region is concerned all prospect of success which the 'Basic Plan' might otherwise have had. This situation was the most futile because, as was well known there were in most Provinces no crop statistics worth the name and in those Provinces where a Permanent Settlement existed

there was no machinery for assessing and recording crops. The procedure which the Government of India adopted was to call for 'target figures' meaning thereby, in the case of surplus Provinces, an estimate of the maximum quantity, on an austerity basis, that the Province could provide for its neighbours, and, in the case of deficit Provinces, the minimum figure on an austerity basis, on which it could subsist. The Government of India called for these target figures and the first alarming disclosure, which might have warned the Government of India that they could look for little, if any real, cooperation from the Provinces and States, was that the deficits were four times the surpluses. This was followed by a call from the Government of India to Provinces and States to set up the procurement machinery by which they were to procure their own foodgrains either for consumption or export as the case might be. It was at this point that the quarrel broke out between the Government of India and the Provinces in the Eastern Region as to the extent to which the surplus Provinces were in surplus and what were the deficits of the deficit Provinces. In the end, the Government of India regardless of the warning at the second Food Conference was compelled to take the course of overriding their own Provinces. The 'Basic Plan' target figures, as they were finally decided upon by the Government of India in its own judgment, were circulated with the Government of India (Food Department) letter No. G IV (28) 43 dated 13th April 1943. So far as the Eastern Region was concerned the relevant extracts from the document by which the Government of India overrode the assessments of their own surpluses by Assam, Bengal, Bihar, Orissa and the Eastern States are set out as Appendix E to this note. In all the circumstances, having regard to the course which events had taken these assessments had necessarily to be arbitrary. The consequence was that spontaneous goodwill which was the only possible foundation for the 'Basic Plan' was killed at the beginning and, in the Eastern Region, that was the reason why it failed. Appendix F is the letter of the Secretary to the Government of Bihar dated 21st April 1943 which gives the immediate reaction of at least one Province of the Eastern Region to the target figures upon which the 'Basic Plan' was founded. This letter describes them as being 'based on unwarranted conclusions drawn from unreliable data — 'realistic language for correspondence between a province and the Centre.

20. So far as the Eastern Region was concerned Bihar was assessed to a liability of 300,000 tons for export to Bengal, in the face of its assertion that it was a deficit Province. On Assam was imposed a burden of 100,000 tons in addition to its commitments to the Army. To a lesser degree Orissa and the Eastern States were assessed beyond their admitted capacity. On the other hand, Bengal, which by this time knew full well the extent of its crop failure, urged that it was at least a million tons in deficit. This was a very moderate estimate. It was, in fact, unjustifiably 'moderate'. Nevertheless, this claim was met by the Punjab and from Sind to the limit of its normal imports.

21. The 'Basic Plan' came into operation throughout India in April 1943. On that day surplus Provinces were to begin deliveries to a programmed set by the Government of India. By early May, it was obvious that, as far as the Eastern Region was concerned, the Plan had wholly broken down. The Foodgrains Policy Committee would not have it that the Basic Plan failed. So far as the Eastern Region of India was concerned, the Plan succeeded in extracting for Bengal no rice or paddy from Bihar, practically nothing from Assam and only a mere trifle from the Eastern States. From Orissa a moderate quantity was secured; but this was the result of the generous negotiated gesture by Orissa towards Bengal, which preceded, and had nothing to do with, the Basic Plan as such. It was given rather in spite of the Plan than because of it. If success and failure to be judged by results, no special pleading can disguise the fact

that the Basic Plan was a failure in Eastern India. By the 19th May the 'Basic Plan' had wholly failed in the Eastern Region, if failure means that the expectations of the Government of India had not been fulfilled. In fact it never started to operate at all. Calcutta with its four million population, many of which were vital to the war, was on the brink of starvation; prices within Bengal had soared again; supplies had dried up everywhere; in short the machine, hurriedly devised and shabbily constructed by the Government of India to replace the motive force of trade, had broken down. The reasons were not far to seek, their roots were to be found in the destruction of India's food economy described in Chapter 1. The immediate causes lay in the failure of an attempt to displace the work and customs, the currents and cross currents, the ancient flow and counter flow of the trade of a hundred years by an instrument which had to depend upon the broken needs provincial cooperation and administrative efficiency. The make matters worse, the Plan lacked any form of sanction, while the only effective substitute for sanction, that is goodwill, had been destroyed by the necessity to which the Government of India were driven to dictate to the Provinces on no reliable data and without the means to enforce its dicta. Trade had dried up, prices had soared, the Basic Plan had miscarried, fear prevailed, and Calcutta, with parts of East Bengal, had approached the edge of the precipice of starvation. That was the position early in May 1943, when we were driven to the 'free trade' experiment in the Eastern Region.

1, 2 and 3. Appendices referred to in this document are not printed.

73 Work done by the Bengal Chamber of Commerce (extracts) (from Braund's memo) before Aug. 1944

Braund's Memo - Nanavati Papers, File No. 57/1944-57

[NMML]

22. The work being done by the Bengal Chamber of Commerce in feeding the bulk of the industrial population of Calcutta has been mentioned earlier in this chapter and it would be perhaps convenient at the point to explain it a little further.

The Bengal Chamber foodstuffs scheme was inaugurated in August 1942 and received the immediate encouragement of the Bengal Government. It was started, not with any desire on the part of employers to enter the field of the producer merchant, but solely and simply to protect their labour against the exploitation which was taking place and against the interruption which in supply which were a feature of the year 1943, when India was threatened by invasion from without and anarchy within. The year 1942 was a year of frequent strikes, centering largely round the question of dearness allowance which threatened to develop into a frenzied pursuit of prices by increasing allowances. This was met by the Bengal Chamber of Commerce by a system of increasing dearness allowances and supplying foodstuffs at fixed rates. Starting from comparatively small beginnings in August 1942, the scheme sprang its significance in December that year when Calcutta had its first enemy air-raids. The turnover of the scheme during that month was 20 1/2 lakhs of rupees worth of food, bringing the total turnover for the concluding four months of 1942 to a total of 45 1/2 lakhs. The scheme got into its full stride in 1943 and the value of the foodstuffs handled by it during that year amounted to

nearly 7 crores of rupees or 5 1/4 million pounds sterling. Throughout that period the scheme catered for the essential food requirements of an average of just under 600,000 workers, to which had to be added their dependents. A figure of a million is a reasonably accurate estimate of the number of industrial workers and their dependents in Calcutta catered for by the scheme throughout 1943. From the end of 1943 onwards it is estimated that the Employer's shops of the Chamber scheme, which were preserved by and made a part of the rationing scheme of Calcutta, will cater for approximately a million and a quarter stomachs. That is only a little less than a third of the population of the second biggest city in the Empire. There were times early in 1943 when those responsible for the administration of this gigantic scheme were unable to foresee supplies for more than a few days ahead. In particular the point had arrived, immediately prior to the introduction of free trade in May 1943, when the godowns of the scheme had been emptied and there was literally nothing left but the current supply in the shops. The foregoing brief account of the Bengal Chamber of Commerce Foodstuffs scheme, and what it did, is taken from the speech of the President, Sir John Burder, delivered at its Annual General Meeting on the 25th of February 1944. In view of what is said later in this note as to the lack of an adequate administrative organization in the East of India to deal with the task in hand, it is interesting to read what the President of the Bengal Chamber said after pointing out the duty of all good citizens to support the Government in the administration of their food policy. He said:

. . . At the same time Government themselves must be careful to see that all their actions are such as to ensure the confidence they so urgently need. The administration must be adequate in numbers, adequately trained, adequately disciplined and adequately paid. Integrity is of the first importance and there can be few activities which offer more temptations to underpaid temporary officers than those of Food Department. I can think of no Department in which low wages will prove a more false and more dangerous economy. . . . Finally if confidence is to be maintained, enforcement machinery is a fundamental necessity. There is nothing so damaging to public confidence in the administration than the issue of Government orders which are not strictly enforced. . . .

74: Food position – Extracts from Casey's Diary dt 3.7.1944

R.G. Casey's Diary, p. 6
[NMML]

July 31st.

My prodding of the Revenue Minister, in respect of plans to cope with prospective distress in the next few months, has resulted in his asking Stevens for sufficient foodgrains to feed ten percent of the population. This, of course, is impossible to find. Revenue Department cannot pass the buck to Civil Supplies in this way. Such quantities, on such a widespread scale, are quite unnecessary and would entail a degree of locking up of available foodgrains that we could not afford.

I asked Stevens for particulars on which to compile a comprehensive statement of the Food position in Bengal for the Governor's Conference at New Delhi.

75: Bribery in Chittagong – Extracts from Casey's Diary dt 2.8.1944

R.G. Casey's Diary, pp. 5-8
[NMML]

August 2nd.

Seth Drucquer's post-raid information service conducted an enquiry into the incidence of bribery and corruption – 'Is it your personal experience that you have to offer bribes to public servants – Government, Railway or Municipal? The almost universal answer was 'Yes', with details.

The story of Chittagong in recent months doesn't reflect much credit on Stuart. Although I have not heard his version of affairs, it looks to me as if his judgement had been rather badly at fault. He started by saying – 'give me a lakh of maunds of rice a month, and you needn't worry'.

Within a very few months, he wanted 5 lakhs a month. Now he says – 'Don't send anything at all for a month, as we can't handle it'. Meanwhile, the rice price has gone haywire and has caused political embarrassment both in Calcutta and in London. What has Carter been doing too?¹

1 Carter refers to M O. Carter, I.C.S., Commissioner of Chittagong Division.

76: Evidence by Mr D.I. Mazumdar (dt 4.8.44) (extracts) before Famine Inquiry Commission

Nanavati Papers – Vol. II, pp. 524-6
[NAI]

45. When were the purchases from Northern Bengal effected? – We wrote to the District Magistrates of surplus districts in the third week of December 1942 to purchase as much as possible.

46. No purchases were made before December, and was there no procurement policy? – No. although we asked District Magistrates to purchase in the third week of December, it was only in January 1943 that we had a full-fledged procurement scheme.

47. What was that scheme? – that scheme was briefly like this: (Here the witness read out in full form 'A note on the Agency System for the purchase of rice and paddy in Bengal in 1943').

48. Why did that scheme fail? – The scheme failed for many reasons which I have enumerated in my note. One of the reasons was that Government could not wait.

49. Why could not Government wait? – Because if the cultivators refused to sell the grain for even two weeks, they could hold up Government and make our position impossible. We had no large reserves of grains, and our Foodgrains Purchasing Officer would have been

compelled to buy at prices higher than those that we had indicated to our agents. Actually, this was what had happened.

50. Was not the main reason that the ceiling price was very much below the current price? — Yes, another reason was that our prices were slightly below the current prices in some districts.

51. If you had fixed your ceiling price to begin with in accordance with the market price, do you think there would have been an accumulation of stocks? — My own view was that we could have got some stocks even at the prices that we had laid down. I thought the price was low, but not very low. In the first week of January the prices in our buying areas were also low in the neighbourhood of Rs 10 to 11.

52. But your ceiling price was only Rs 9.8.0. Because your prices were very low compared to the market price, was that the main reason why you failed to get sufficient paddy and rice? — The top price I mentioned was for fine rice, but the fact is that whatever be the prices that we might have laid down, unless we had a procurement programme, which was enforceable, and to which we could adhere, we could not expect any large quantity of grain from the cultivators. Having regard to the fact that the market had been upset by the cyclone havoc, the anticipated short crop and the air raids, we should have had a vigorous procurement policy.

53. What do you mean by a vigorous procurement policy? — To organize the internal trade of our buying areas so that it could be canalized through controlled channels, to provide our approved buyers with transport, to exclude all other buyers, and eventually to requisition from stockholders, if necessary. All these things take time, and as a matter of fact, we found that orders given to the Railways often took about two weeks to reach some of the way-side railway and steamer stations. . . .

63. When was the question of requisitioning examined? — It was examined at a later stage. There were differences of opinion and the Government decided that they could not undertake requisitioning in view of the possible administrative and political repercussions that would have ensued.

64. *Mr Ramamurty*: When exactly was this general examination of requisitioning done? — It was in the first week of March 1943.

65. I should like to have the papers relating to the question of requisitioning — I want to know what were the arguments for and against requisitioning.

Chairman: I think it is mentioned in the Bengal letter — Yes, it is also in the official memorandum to the Bengal Cabinet dated the 5th March 1943 regarding the announcement abrogating the price limit.

66. *Mr Ramamurty*: Does that describe the question of requisitioning there? — Yes, very briefly. It is a memorandum. There is also a record of the proceedings of meeting held on the 3rd/4th March, 1943, to which all Commissioners of Divisions and selected District Officers were invited.

67. *Chairman*: This was when the procurement scheme failed? — Yes. [Mr Majumdar then gave to the Chairman a folder which contained the letter in question, viz. Letter No. Confl./Important No. 3600 (27) DCS from the Government of Bengal Directorate of Civil Supplies, dated the 11th March 1943 to all District Officers etc.]

68. This was the letter which was proposed to be issued to District Officers? — Yes.

69. What was the decision taken? — it was decided that there should be no price control, and the letter issued on the 11th March.

70. Can you tell us what happened afterwards? — I was there only for a short time after

that. But I recollect that prices began to shoot up steadily and by the time I left, the prices were between Rs 18 and Rs 20 a maund.

71. *Mr Ramamurty*: So you think that revised policy failed? — Yes, In my view the policy was foredoomed to failure.

72. What do you think is the reason for the failure of that policy? — It was fundamentally a wrong policy. You cannot have free trade in a short market.

73. *Chairman*: If this policy had been applied in January, would the position have been better? — No, it would not have helped either because there was an expectation of rise in prices on account of shortage. It was a well-known fact that there was going to be a bad crop, and when you have a shortage or an expectation of shortage, free trade cannot get you the grain that you want. My own opinion was that the agency system should have been modified and reinforced so that we could exercise firmer control over the movement of grain both within our buying areas and outside, and thereby acquire greater control over the available surplus of grain.

74. This decision was taken early in March — that is to have no price control in order to obtain supplies from Assam and Bihar and Orissa. Can you tell us what happened subsequently? — Just before I left, we had some talk about this free trade between the provinces, but no decision was taken till much later, i.e. in May-June, 1943.

75. Your knowledge ceased about March? — Actually I made over in the first week of April . . .

77: Viceroy's visit to Calcutta (extracts from R.G. Casey's Diary. dt 5.8.1944)

R.G. Casey's Diary, p. 13

[NMML]

5.8.44

As regards rice procurement, he¹ said that some of his Council were harping on the necessity for requisitioning in Bengal. I said that we would not start something we couldn't finish.

1. The Viceroy.

78: Casey's visit to Pabna (extracts from R.G. Casey Diary, dt 10.8.1944)

R.G. Casey's Diary, p. 22

[NMML]

August 10th.

Slept last night in train at Ishurdi Junction, and met this morning by A.H. Chaudhury (D.M. Pabna) and S.K. Sinha (S.P.).

Motored to Tebna (halfway to Pabna) and made a speech to a group of local people including Union Food Committees. The suggestion was made to me that we should nominate the members of the Union Food Committees. In this way we would get people who would work together and eliminate the bad local politicians. Although the democratic principle of election would then be missing, we would get bodies that would produce better results than at present; and anyhow, we will be blamed if the present Union Food Committees do not succeed in their work as every one believes that the District Magistrate could replace them if they were not doing their work properly. In other words, the D.M. is responsible in the local mind, and will be blamed if he does not replace people who are dishonest or who work only for party ends.

Motored on through Pabna to Salgaria and inspected Government rice godowns, again run by a number of local merchants. Good, dry storage again.

Inspected the Pabna Sadar Hospital (shown round by C. Banerji, Civil Surgeon) – then the Pabna Silpa Sanjibani Co.'s knitting mills using British automatic knitting machines and turning out what appear to be very good singlets and under clothes, largely for the Army.

Then visited the E.B. Technical School, which is the best I have seen in Bengal – a part from Barber's School at Faridpur which is on different lines.

Then inspected the Police lines.

Had a number of interviews with local people in the Circuit House before lunch.

Although the Bengal Volunteer Group¹ is said to be strong in Pabna, the leading local people had never heard of it.

1. This refers to an underground revolutionary group who were followers of Subhas Bose – Ed.

79: Casey's talk with Braund: Extracts from R.G. Casey's Diary dt 11.8.1944

R.G. Casey's Diary, p. 23
[NMML]

August 11th.

I saw Braund, on his return from trip to Bombay and C.P. where, he says, there is in fact no total procurement at all. He outlined the way his mind was working as regards his committee's report. He welcomes Aldridge's presence here. He thinks probably a total of 7 Chief Agents would be advisable. He spoke of the possibility of asking G. of I. to accept the responsibility for full feeding of Chittagong District (about 80,000 tons a year) – all by sea – and to ration the District fully. He believes that there are many too few rice mills in Bengal. We should aim at milling one million tons per annum.



80 Evidence of O.M. Martin, Famine Commissioner before the Famine Inquiry Commission — (extracts) dt 12.8.44

Nanavati Papers – Vol. II
[NAI]

Calcutta, dated, 12th August, 1944

Present: All Members of the Commission.

Serial No. . . . Mr O.M. Martin, C.I.E., I.C.S., Famine Commissioner, Bengal.

1. *Chairman:* What are you, Mr Martin? -- They call me Famine Commissioner since the end of September -- September 26, 1943.
2. What were you, before that? -- I was Commissioner of the Presidency Division.
3. And therefore in close touch with famine operations? -- I had to give ordinary relief in many areas. One was the cyclone affected areas in 24-Parganas, other was the Kandi Sub-division in Murshidabad.
4. You were in charge as Commissioner of the Presidency Division then? -- Yes, and as such I toured in those areas
5. Can you tell us what is in your note which you say you have sent to us but which has not yet reached us. The note begins with the unusual features of the distress which you have already heard about. The first place to give trouble was the cyclone affected areas in 24-Parganas.
That place I visited at a very early stage in 1942. After that the responsibility for that particular area was taken out of my hands for the time being by the appointment of Mr B.R. Sen as Additional Commissioner of the Presidency and Burdwan Division with authority to control and supervise famine relief in the cyclone-affected areas in Midnapore and 24-Parganas.
6. So you passed out of the picture then? -- Not exactly. I ceased to have responsibility for the time being but as soon as Mr B.R. Sen's appointment ceased -- I think it was in March or April 1943 -- I had again to look into famine relief operations in 24-Parganas. But I could not go down to the affected area because I could not get a launch which had all been commandeered by the Army.
7. And that restricted your movement as Commissioner? -- Yes, to a large extent.
8. Did you form any opinion as to why in the early months of 1943 trade dried up? -- I think trade dried up owing to a variety of causes. One was hoarding which was due to either scarcity of actual food or to apprehended scarcity. Then was there control which tended to dry up trade.
9. I think control had not been going on in the earlier part of 1943? -- Control had been going on for all the time from 1942.
10. It was withdrawn in October, 1942? -- I have forgotten the exact time but you will find that in my note. There was still a maximum price which, however, was not strictly enforced. There was other things which I have not got in my memory at present.

12. The trade did dry up, you think? – Yes, to a very great extent in spite of the anti-hoarding drive.
13. But that came into force in June, I think? – Yes, it dried up trade very much – that is the impression I got.
14. Do you think anything was being done to keep trade moving in February, 1943? There must have been plenty of rice about then which had not disappeared. There was plenty of rice about but the people who had it were hoarding it in the expectation of a further rise in price. There was great speculation going on.
15. Was there any drive to collect rents, revenue, agricultural loans, debts to co-operative societies? – As far as I can recollect there was no big drive at all beyond the usual.
16. Was there no real attempt made to compel the cultivator to pay up his dues? – That was proposed by Mr Pinnel and myself but it was not acted upon as far as I remember.
17. Do you think anything could have been done to open up trade. If the hoarders had any reasons to believe that prices would fall they would have released their stock but as long as there was any chance of increased profit by hoarding, they would not do so.
18. Did you create the impression that prices would fall? – We could not create any such impression. But I think we could have created that impression in one way, and that was by importing rice from outside. But Government were not getting rice from outside at that time.
19. You think that was the only way that would have brought about a fall in prices? – That was the only way to get rice unloaded in the market at certain points, particularly in Calcutta.
20. *Mr Ramamurty.* Was there not a complaint lodged about rice which reached Calcutta but which was not used for any purpose what so ever – that concerns the Civil Supplies Department who will be able to tell you about that.
21. There was a complaint that large quantities of food that reached Calcutta were not distributed. They were simply wasted. Was it so? – I cannot go by rumours. What the correct facts are, I do not know.
22. *Chairman.* Why did village charity dry up? – Village charity dries up when there is scarcity. That has been the normal feature during famine.
23. But there was no real scarcity of rice? – There was local scarcity owing to stoppage of trade.
24. Why did not the cultivator in the village assist his brother who was not so well-off as he does in normal times? – They did so in certain parts but in other parts they did not. It is a psychological factor which it is difficult to assess that charity dries up during famine and requires special stimulation to make it flow. It has something to do with the rise in prices of food articles.
25. How is it that village charity dried up when there was real distress? – Because, although in normal times village charity does support a certain number of people, that seems too have broken down entirely where there is scarcity of food and consequent rise in prices.
26. But there were people who had rice and who could give in charity? – The idea was that people who had rice did not want to give it away as charity because it had become a very valuable commodity. People who had not got so much, hung on to it because they would not be able to get it at all if they parted with it. Charity in villages is usually in the shape of *musthiviksha*. Rice became so valuable that it could not be parted with and naturally charity dried up.

27. Would they rather see their fellow brother die instead of giving a handful of rice? -- That was the fact, Sir, as far as I could see.
28. Is there anything special you would like to tell us? The first urgent problem I had to undertake was to deal with Calcutta. Swarms of diseased and starving people who came into Calcutta stopped there. As the problem became acute I wrote to Mr B.K. Guha who was at Burdwan asking him to come and look after the Calcutta relief, as my Deputy Director. I wanted to be free to tour extensively. He took charge of Calcutta relief and his evidence would be very useful. I practically left Calcutta to him. He is very experienced in regard to relief work. The relief of Calcutta was done by the honorary organisations, who used to get supplies of foodstuff from the Civil Supplies Department and distributed them all over the province. Before Mr Guha came I called a meeting of the leading representatives of those organisations in order to get their opinion as to how best we could work out our policy. They were two opinions. One opinion was to clear Calcutta of these destitutes and the other was "These unfortunate people are starving. They come here to get food. We cannot drive them away".

Government previously had different camps outside and in Calcutta. These people did not know where the camps were. People were coming from 24 Parganas and Midnapore. They made use of the refugee camps constructed in different areas. The first thing for me to do was to get shelters in Calcutta for these people. These starving people could not be taken off the streets without making arrangements for their shelter. I wanted some place in Calcutta. Hospitals were not sufficient and also poor houses and shelters did not provide treatment.

The next thing was to get camps in the direction of their homes. There will be less trouble in putting people in camps if the camps were started in the direction of their homes. Most of the people came from the south. In doing that I asked the collector of the 24 Parganas to take up this matter because it was his area.

The other thing I had to do was that I would not send anybody from these camps to the villages before arrangements had been made in the villages to feed them. A number of feeding camps were started in the villages from which they came. These shelters and poor houses had to be made not only in the 24 Parganas but also intermediate camps between Calcutta refugees and their homes had been made in Midnapore. There are still camps in Midnapore. They did not work very well at first.

When first, we did not get hospital accommodation for housing these people, the Calcutta Improvement Trust came to our rescue. Big bustee areas we got for shelter purposes. The heart of Calcutta was the base of our operations and this is, I think, still going strong. The other trouble was that these people did not want to go into shelters and some force was therefore necessary. I had agreed that we would not use the police unless forced to do so and that we would use the minimum amount of force. These people were taken off the streets and taken to food kitchens. There they got two good meals a day and also got clothes. But they kept running away. We kept on at it and gradually other poor houses became popular and then they became too popular. Besides that, after it had started, similar work was begun by honorary organizers like the Ramakrishna Mission and gradually hospital accommodation became almost sufficient. I cannot say whether it was quite sufficient at the time of a famine. Eventually Calcutta was fairly cleared and was practically normal by the end of November. The Governor would not believe me when I told him this. He said the figures showed that Calcutta had not been cleared.

Figures of pick-ups from streets appeared to indicate that it had not been cleared. But for every one person picked up, three or four ran away back to their homes.

29. To their homes or to the streets? — To their homes. The fact was that the *aman* crop was in. They found a good crop on the ground and they ran away back to their *aman* crops. Right at the end of November that was a determining factor. The crops cleared the streets for us more than our actual operations. People started to go back. Mr Llewellyn, District Magistrate, 24-Parganas, did the job very well. That was all about Calcutta operations. . . .

[Omitted: Questions is from 30 to 46 — Ed.]

47. Are they still full? — No, The hospitals are by no means full. To the best of my belief improvement in public health is very slow indeed. The number of people in the poor houses did not go down. We had to start poor houses all over the place. In no other relief operation in Bengal had we to provide such a vast amount of shelter as at present. The poor houses had to be started all over the place. You would find everywhere masses of starving people and you had to set up shelters. We had to set up a medical department and obtain an enormous amount of camp hospitals equipment. We had no proper arrangements on which to found that system. Practically all the hospitals in rural areas were in a moribund condition already. The whole medical department was never under the control of the Government. It was entirely in the hands of the local committees. We had to take a very badly organised show and we tried to bring it on an efficient basis. Exactly the same remarks apply to the public health organisation. It was in a very inefficient state throughout the province and the standard of pay was very low and, therefore, there was an enormous increase of disease. We cannot deal with a wholesale famine like this unless there are good arrangements. There should be a permanent system of poor relief, a properly organised system of public health, and properly organised system of medical relief. If you had a system which was efficient in normal times, you can expand it for coping with extraordinary times. Ordinary administration is utterly inefficient so far as medicines and supplies are concerned. What I could do was to open more hospitals and poor houses and spend as much money as possible. I take the view that appointment of a special officer to take charge of relief operations is necessary. People were then dying in thousands.
48. *Chairman:* There was no special officer in charge before you were appointed in September 1943? — I was supposed to look after the Commissioner and the District Magistrates to see that they did their jobs well. I may make my position clear. I was never put in charge of relief operations. I was purely an inspecting officer and I was supposed to see that the other officers did work properly. I was additional member of the Board of Revenue and I was given no responsibility. In spite of that I assumed a lot of powers which I had not got and I carried on.
49. Who was in charge of Calcutta Relief before you were brought in? — It had been done by the Revenue Department. They had a Relief coordination Officer.
50. What was his position? — He is Assistant Secretary to the Revenue Department. He is a special officer. He was in charge of relief in Calcutta. When I heard that I was to do this job I proposed to put Mr Guha as my deputy and it was agreed to verbally and I, therefore, carried on like that. Mr Guha's position was that of my deputy. It did not matter because his main job was to keep together all the different honorary organisations

that were working. He was just the ideal man to do it because he was the college friend of Dr S.P. Mookerji.² That was an important thing in Calcutta because he was the most influential man in Calcutta at that time and he had big relief organisation. The first thing that I did was that I continued my policy in Calcutta of giving relief and then I went out. I went to Dr S.P. Mookerji and asked whether this policy was right and he said that it was all right. I was lucky in getting Guha. My policy was to get in touch with influential people. I must confess I was not able to do very much. I gave advice to district officers and did inspections. When the Army came in something was done.

51. The Army came in and gave transport. Why did not the idea of getting some organisation appeal to the Bengal Government before? -- It will be for the Government people to reply to that . . .]

[Omitted: Question by Dr Aykroyd – Ed.]

53. *Chairman:* Control over the district Board staff? – Yes. After the Military took over the control of the Public Health staff, the standard of medical relief and public health improved. Dr Aykroyd knows all about that. When I took over, the Surgeon General was ill. When he came back he worked like a prodigy and started camp hospitals all over the place. But Surgeon General had under him a most disappointing crowd. The trouble was that we had not got efficient Civil Surgeons and Sub-Assistant Surgeons except in one or two districts. They were to tell you the honest truth – a hopeless lot.
54. If there should be another – I hope you will not have it – if there should be another outbreak, they will never deal with it, unless you have a really efficient foundation of medical and public health services; – 'That is quite so. And you will never run the Public Health and Medical Services efficiently unless you provincialise them: that is my opinion.
55. It is a very definite reversal of all past policy. The policy of making the District Boards responsible for public health administration has been there for many years? – In every branch of the administration now the tendency is the other way – centralization and direct control by Government. I am going to be Commissioner for Post-War reconstructions and as I am trying to work out the plan, I see the general trend is towards much more Government control. For instance, we have town-planning schemes under consideration and housing schemes for the poor. Now under local bodies you can get nothing done to improve the housing conditions. It is no use depending on the Calcutta corporation. In the past the policy was to provide people for opportunities of training in local self-government. But it is now recognised – even Government have recognised it – that there should be increasing Government control. For instance the Calcutta Improvement Trust Act is being extended to Howrah and they are putting in charge of the Improvement Trust the execution of the Howrah Drainage scheme. There is no reason why the Improvement Trust should look after the Howrah drainage and not look after Calcutta drainage. And also when you come to the town-planning and construction of housing for the poor, if you want that efficiently done, will have to put another adhoc housing trust separate from the Calcutta Corporation.
56. Your view is that local self-government has broken down? – That was clearly long ago. It was merely a question as to when we are going to recognise it and take action accordingly.
57. Do you think that the famine has been – an eye opener.
58. *M. Nanavati:* Had you many District Boards suspended? – We nearly always had one

or two suspended — or rather they were put in charge of the District Magistrate as Chairman. That usually does the trick, but it is not quite satisfactory.

59. *Chairman:* Why do you think district Boards failed? — There are several reasons: one is that the Chairman is a non-official and he very seldom exercises any effective control. He is very often surrounded by rather lazy men. Secondly, he is immersed in local and party politics. He comes as Chairman as the head of a party, rather to please the party. The third reason is finance. And the fourth reason is corruption. Finance is rigid. The expenses of the district boards are going up, whereas their income remains constant. The other thing is, to be perfectly frank, corruption in all local bodies. Of course there are exceptions where you have a really good Chairman who works well.
60. Do you think that because the local authorities were not rich enough to be able to employ first class officers as Secretary, District Engineer, District Health Officer, the District Boards have failed? — My experience is that, more often than not, efficient men are not taken. They will put in one or two of their relations or one or two of their own party men.
61. *Sir M. Nanavati:* Do you think that for this state of affairs in the District Boards the Provincial Government is free from blame? or do you think that the Provincial Government can effectively check such evils in local bodies? — The Provincial Government has got this advantage. They have got a permanent civil service, and particularly an all India Civil service, which in the old days could resist certain influences: I think that power of resisting is being sapped now. I have got so fed up with the Municipal and district boards that I did tender my resignation on the ground that politics is becoming more important than administration and I did not think could usefully serve such a Government as that of Mr Fazlul Huq's Ministry. Certain of the officers have been kicking hard but how long this kicking will go on I do not know because it does not pay to kick and most of the officers feel that if they want to get on in the service, they should please the Ministers. I am only kicking because I would not care if I retire, and so I kick. Another person who is kicking very hard is Mr Pinnell. He is a very strong man against this theory that political considerations should predominate administration. Administration is one thing and politics quite another thing. That is my view. I hit particularly when personal and political ends are to be served, when appointments and promotions are made on political grounds. These things I hit. I would always resist them, but the Ministers do not like these things to be resisted.
62. You mean some of the District Officers did not function properly? — That is correct, it was always the same, one officer is good and another is not so good. It is very largely a physical matter, because some officers can stand more strain and others cannot.
63. *Chairman:* Some of the district officers did not do as others, that was not due to any political trouble? — No But when you go into the Secretariat you get this type of officer. What I meant was that we were very hard up in 1943 for good district officers. I had some very good S.D.O.'s and the demands made on them were extraordinarily high and I hope the Commission will examine some of them, because they will be in a position to tell the story better than any one else.
64. *Mr Ramamurty:* Have you any Relief Commissioners? — None, except Mr Sinha and two or three officers.
65. *Chairman:* Your business was to supervise the Commissioners? — yes.
66. *Ramamurty:* Was there any special allotment for relief work? — No, the emergency was so bad that the usual financial procedure broke down.

67. Have you any idea as to how many people received relief from the relief operation? — The figures are in the Revenue Department who can give you all the figures.
68. Have you any idea as to how far members of families were separated from one another? — In Calcutta this did happen in particular. There were two kinds of dispersal. It was very common whenever there was a case of dispersal that people went in different directions when some persons were separated from their relatives. In Calcutta people were very often picked up from the food kitchen centres and brought to the poor houses. There some woman would complain that she had lost her child and that her husband had gone away. When we picked up people under compulsion it very often happened that some persons were separated from their relations. What we did in the end was to set apart one poor house in Calcutta to which we sent all the people who were separated from their relatives. Such persons were sent to that particular poor house and when they were there they picked out their lost relatives. Besides if anybody in the street said that his daughter or wife was lost he was told to go to that particular poor house and find her out. That was a very simple arrangement. Mr Guha will be able to tell you about that.
69. How was relief given to the people in the districts who had lost their property and who were too weak to work? — You will see that they were mostly women and children and there are two kinds of relief given. One is food kitchen but the other is the poor house system which was turned into work houses. We started with the poor house. We had to collect these people and give them shelter and we found it was demoralising to keep them idle when they could work. We started little industries — light work — like basket-making, charkha-spinning, paddy-husking, etc., and made the relief conditional on work. That was first introduced on a big scale in Faridpur by Mr Karim and it was then spread to other places. That was our method of dealing with the aftermath of famine.
70. When did you begin this work? — About the end of February when my post was terminated.
71. By that time did you feel that the villages were reverting to their old economic conditions — people getting back their land and their old cattle? — Before the end of February there was a lot of improvement in the famine condition and we were concerned with the health of the people. Our task was confined to hospital and public health movement and to looking after orphans and widows. Able-bodied people were of course already in a better condition.
72. *Chairman:* They were in great demand, I suppose? — Yes, As soon as the harvest started every able-bodied male was earning a very big wage and was very happy. That stopped the horrible sight of the latter part of last year and we did no more see people walking about as skeletons. So we had to start relief work in a different way.
73. *Mr Ramamurty:* Who is in charge of it? — I think there is no special officer in charge of it? — It is being done by the district officers but they have got a Relief co-ordination Officer in Calcutta still. The Revenue Department may be able to tell you what the present position is. Nobody succeeded it in any case.
74. Roughly speaking, so far as you can estimate, can you say how many people were left in the poor houses as derelict able bodied people and as sick and helpless people. — The Revenue Department can give you the number of people in the work houses from day to day.
75. *Sir M. Nanavati:* What was the distance from which people were coming, to Calcutta? — It is difficult to say. People came from different places. A lot of people came from

Contain. They had to cross rivers and they must have come by boats and it took them weeks to come to Calcutta.

76. How were they fed on the road? — They starved on the road and they took wherever they could get something from the relief kitchen on the road side.
77. Then some people came without any food for several days? — Yes, and it was a horrible sight. They came mainly from the south and the south and the south-west, namely, from Howrah, Midnapore by various routes and from Diamond Harbour in the 24 Parganas.
78. How could they come by boats when they had no money with them? — They managed to cross rivers by ferry boats. ferrymen usually took pity on them and ferried them to the other side.
79. I take it that all that you have said is about Calcutta. What were the conditions in the bigger towns in Bengal districts? — Wherever there was distress they flocked into the towns nearby for food and similar arrangements of food kitchen were started.
80. Who managed the food kitchens? — Usually local committees looked after them. Distribution of food in most cases was done by those committees and the District Magistrate helped them to get foodgrains. Generally speaking, it has all got to be run by local committees. Mr De, for instance, the District Judge of Dacca ran the relief in Dacca city with cheap canteen shops.
81. *K.B. Afzal Hussain*: Did a lot of the affected people sell their things and cattle as also their property? — Yes, we got the information that a very large number of people sold their land in order to get food.
82. I think the time is now opportune to bring them back to the land if it had been in mortgage. Where it was a case of sale the original owner could get back the land by applying to the Revenue Officer to get it back on payment of the price at which it had been sold out Or, they can apply for the sale to be declared a usufructuary mortgage.
83. I suppose they have not got any money. Do government give them money to get back their land? — They can apply to treat sales within a certain period as if they were usufructuary mortgages and then apply to Government for loan.
84. What about their bullocks and cows? — Help is still being given by the Revenue Department. They are still getting loans.
85. Is the help effective? — I cannot tell you what is the position now. All I say is that very large sums of money were distributed as agricultural loans in 1943 . . .

[Omitted: Questions 86-101 — Ed.]

102. There are many people who have not got sufficient to eat. I agree that is the view generally accepted in Bengal. There is a large percentage of the population who starve for so many months in the year. That is the normal state of things. It is very difficult to say the exact figures as to who gets sufficient food at certain times of the year.
103. What are the chances of removing that, with the present population, and the present amount of land? — There are two things to be done. One is you have to get more people employed in industry. Secondly, you have got to see that the existing land yields more. Another important thing is how to check too rapid increase in the population. Disease is a very big factor which reduces energy of the worker. Stop malaria. Wherever you will find malaria is present, the people do not or cannot work hard.
104. Do you think there is likely to be change in the next 5 years? — I am not hopeful about that. There are many things to be done before you can do that.

105. Do you think any revolutionary change is necessary? — If you had an organised system of poor relief. I have dealt in my note with that aspect of the matter. There is the question of social security. The thing which we should aim at is a simple system of local poor relief. I think it should be recognised that when a person is actually starving, can get no support and is unable to work, that person should be entitled to relief from the State. To my mind, that is the elementary duty of any Government of Bengal in this matter.
106. *Dr Aykroyd*: It is surely a low deal? — It is a necessity. In England poor laws were initiated as early as 1601 on the basis of which a social security system is being built up. I wanted the same thing in India. In normal times the starving person should get a meal on the condition that he works. I do not want to put everybody in a poor house. I want to see that every person who is able to work is given work in a home. In the ordinary way we give charity in India we should give food to one to whom we also give some work. When some women wanted food or relief my wife used to ask her to do some sewing and then give her some food in return. That is the proper way to give relief. Give some light home work and give food in return. That is the system which can be arranged gradually by means of local bodies and you can have a supervisory arrangement. Some poor Law Commissioner should be there to look after the whole show and you should assume control over local bodies to see that they do their job.
107. *Mr Ramamurty*: In these times it is considered the duty of the Government to get enough food for all the population and distribute them equitably. When you agree to that, cannot adequate production and equitable distribution of food be considered the primary duty of Government in normal times? — I do not think it is necessary for Government themselves to undertake distribution of food as a saleable article in normal times. Why should they do a thing like that which trade can do much more efficiently and cheaply?.
108. Is it not the duty of the State to see it is done? — Just as Government law and order to see that disorder does not emanate, is it not one of their duties to see that people get enough food? — That is a primary duty which is recognised now that everybody gets enough food. I do not think that is done even in Russia.
109. It is done in Russia all right. I have been in Russia for a month and I know. I, have studied it carefully. In Russia payment in the collective farms is strictly according to the work done. People are given free rations only when they are unable to work.
110. But they give opportunity to work for people who can work? — To give people work and give food in return for work is the ideal . . .

[Omitted: Questions 111–131 – E . . .]

132. *Dr Aykroyd*: With regard to the working of the charitable organisations during famine, was that in general satisfactory? A lot of relief was done by charitable organisations run by Government. As a matter of future policy in famine time, would you, from your experience of these times, recommend that a lot of responsibility should be entrusted to charitable organisations or that Government should undertake the relief generally? — We cannot depend on charitable organisations entirely. We can only use them to supplement the work done by us. They choose an area and they work in that area, leaving the other areas. They do excellent work in those areas. But you cannot depend on them to cover all the areas. There is no general substitutes for Government relief which are very useful to supplement. The actual running of big poor houses was managed

by those institutions. They were very well handled. The work of Ramakrishna Mission was extremely satisfactory.

133. They worked mostly in rural areas? — Yes. They chose the area and said that they would be responsible for a certain area. We financed and they ran the show very beautifully.

1. Refers to hospitals and poor house.

2. B.K. Guha and S.P. Mukherji — both read Economics with honours in Presidency College, Calcutta — graduating in 1921.

81. Evidence by Justice H.B.L. Braund (extracts) dt 14.8.1944 before F.I.C.

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[NAI]

140. Do you think that Bengal's political troubles then had anything to do with the food crisis? — No Sir, except in one or two very minor instances, and speaking by and large I do not think it has been handicapped on political grounds.
141. You do not think the Ministry was so busy trying to retain its office that it was not able to devote full attention to the food problem? — No, Sir, certainly not.
142. The first few months of 1943 were very critical for the Ministry in Bengal, and the new Ministry came at the end of April — I would rather not speak upon that because I was not here then. But I would like you to understand that, even though there are matters about which you can criticise Mr Suhrawardy,* you cannot say that he did not take a full interest in the food situation. I know he put his heart and soul into the work . . .

[Omitted: 143 to 62 — Ed.]

163. *Chairman:* What about the Foodgrains Control Order? — I am upset about that. To put it almost in a sentence, it scarcely operated at all in Bengal.
164. Do you believe that it is, if properly used, an efficient weapon? — Yes.
165. Do you think that attempts to contravene the Foodgrains Control Order were widespread? — I think that is the truth. I think that some form of Foodgrains Control Order is absolutely indispensable, which brings us back to the whole theory of enforcement. The theory, to my mind, is this — that you can never start to administer food without having an enforcement system. Whether you call it the Foodgrains Control Order or something else, an efficient enforcement system is part and parcel of it. You can pass your laws, you can pass your regulations, you can pass orders; but you have got to have some form of sanction to back it up. Unless you have that, no form of administration will succeed. Therefore, you have got to have something. Even if your Foodgrains Control Order is being opposed, that does not mean that you can afford to give it up; you have got to administer it; you have got to overcome that opposition.
166. I see that you are satisfied in your own mind that it is an efficient weapon — I do not say that there are no cases of contravention of the Foodgrains Control Order, but

generally speaking, even if it were true, I should say it is all the greater reason why we should go on and have some firm administration. I feel very strongly about that, because it has been an outstanding failure in Bengal that they have not tried to administer the whole system. One of the instances in which they failed is the Foodgrains Control Order. I am sorry for being rather heated. I feel very strongly about it.

167. Why have they failed? — I have given the reasons in my memorandum.¹ I have tried in that memorandum to point out the difficulties of the Bengal Government, as well as their failure. In that memorandum I may be charged with being prejudiced in favour of the Bengal Government. Now, I am rather going the other way and attacking them.
168. You think they have made an attempt to enforce that Order? — They have not.
169. Because you cannot get the staff, because I notice that the Government of India have laid it down in the most strong terms that an officer of the standing of the Deputy Inspector-General of Police should be in charge of enforcement of the Order? — May I tell you what they have done? They have appointed an officer to administer the Order. He is in charge of the whole of the Criminal Investigation Department of the Province plus the enforcement, not merely of the Foodgrains control Order, but enforcement generally, of every administrative food order and supply order in the Districts of the Province — the whole of the enforcement programme of the Foodgrains Control Order, Rice Mills Order, enforcing of the district boundaries, the district barriers, the infringement of the maximum prices not only of food stuffs but of consumer's goods under the Hoarding and Profiteering Prevention Ordinance of 1943. He has an office in Alipore and I ask you to note, in the Directorate. And he has been given — I do not want to say more than this — a wholly inadequate staff. I have not got the actual figures here. I could get them. I have examined them. And he has told me perfectly frankly that he cannot do it.
170. I thought the responsibility of enforcing the Foodgrains Control Order was being placed upon the District Magistrates? — Only in this sense that, so far as prosecutions are concerned, they are treated as being responsible just as for any other prosecution.
171. I see the real preventive staff is under the officer in charge of the C.I.D.? — That is right, Sir.
172. And he operates through the Superintendent of Police? — He is being given a police staff. But, Sir, it is entirely under the purview of the police at the present moment — which, I think personally, is wrong. I do not know whether you know the definition that is even in the Foodgrains Policy Committee's Report (Control Order). I have got to find it. In their enforcement section, I will look it up after lunch. They have put a very wide definition on enforcement as meaning all that machinery of Government which backs up the food administration.
Now the first point is that the staff in the Districts is too small.
173. The staff in the districts is under the Collector? — Yes. The whole point of the Foodgrains control Order is that it licenses the traders and it requires the traders to take out a licence to trade, the object being that, when they have taken out the licence, they have to make returns of their stocks. Those returns are susceptible of being checked. You can see, if the thing is done properly, what stocks every trader is maintaining, and whether he is storing them or keeping them back from sale, at what price he is selling them, whether he is observing the price control regulations and so on and so forth. It is the one way by which you can maintain some contact with what the hundreds of thousands of traders are doing. In Bengal, first of all, those licences were issued as a

pure formality. Eighteen months ago anybody who applied for a licence got it, and a vast number of people who this time last year were dealing in grain used it to their own advantage. So the second point is the indiscriminate issue of licences.

174. That was towards the end of 1943? — Right through 1943, from the end of 1942. I think you will find the Food Grain Control Order somewhere in this book.
175. Did the Bengal Government issue their own order? — No. It was a Central Government order. The application requires that the applicant should state the 'place or places' where he is carrying on business and we have found in hundreds of cases they merely filled it up as 'Bengal', 'Dacca' and so on, with the result that there is no statement at all, of where the trader is keeping his stocks. The whole point is to pin the trader down to his particular place of storage, so that the inspector can go and see — what he has got. Yet you find them filling in 'Bengal', 'Dacca' and so on. That is another point. I am repeating things I have heard from my own evidence from the Deputy Directors. In that respect it has become worthless. Government does not know where the man is trading, where he has got his stocks and so on.
176. You do not know where the stocks are and how much stocks there are? — No. The other point is that returns are not submissive. Our information is that it is most inefficiently done.
177. Is it because the staff is too small? — Yes, because the staff is too small. Even when returns are made, there is no check and inspection. We feel that this Control should be tightened, and, until it is done, we shall not make very much progress. I have seen the officer in charge of the Calcutta enforcement. He was a Sub-divisional Officer. He told me himself that none of his officers know much: they had no training in it at all, and it is quite impossible to 'enforce' in that way. We feel first of all that this enforcement branch should be very much enlarged. It should be a Department of Directorate. And there must be something like a training centre for the technical work. And the licensing and returns system must be installed in every district.
178. Did you enquire how they work in Bombay? — We did not specifically enquire, but we asked general questions. However, the main point I want to make is that you have got to put some sanction behind your food administration. The Food Grains Control Order may have to be redrafted, but it is one of the best sanctions you have got for keeping control over commodities.
179. What about the distribution of rice? What guarantee is there that it does not go into storage by people who should not store it when there is a deficit? — The first thing is that it should come into the hands of the districts authorities and be bought in by the Government. I take you back to Dacca. Owing to the breakdown between Bakarganj and Dacca no fewer than fifteen lakh maunds had gone out of Bakarganj.
180. Smuggling is very difficult to prevent. — It is one of the greatest problems. A very big question arises. Is it better to have an ineffective barrier than to have none at all. One of the things we are considering is whether in an area like Bakarganj, Faridpur, Noakhali, Dacca, Mymensingh, etc., etc., it is not better to put your circle outside that and allow free trade inside and not to pretend that you are having barriers.
181. From my own personal knowledge of the area I can say that a barrier is an impossibility. — That is what happens. It is worse than that because there is a great deal of corruption which is lowering the food morale of the people . . .

82 Evidence of L.G. Pinnell (extracts) – dt 15.8.1944 before F.I.C.

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[NAI]

16. *Chairman* – There has been one complication: during the period of statutory prices, the prices fixed were very different from the actual prices? – ‘That was so for a short period. For a short period, from about July/August 1942 until probably about November/December 1942 the controlled prices being reported were quite out of touch with reality. But certainly from January 1943 onwards, I think, price reporting were fairly systematized.
17. Throughout January 1943 you had again indirect price control, because there was a threat that anybody who bought paddy or rice at prices higher than the maximum fixed for agents was liable to have his stock requisitioned; I referred to these figures recently and indications were quite clear that they were not reporting purely controlled prices. In other words, on the face of the figures, the prices appeared to be actual. I have quite recently discussed this with an Indian Officer, from one of the districts in question, who said that the figures could not possibly be correct and they could not possibly buy rice at that price in this district at that time, speaking of January/February 1943. Against that there is the fact that we ourselves were buying rice within these limits at that time. I think the fact is there was a great deal of local dislocation and shortage in local distribution, and consequently a particular town or a particular bazaar prices in a week during a month would shoot up, although it might be possible for us to pick up contracts from the same districts even at a lower rate.
18. You have got those prices? – Yes, Sir.
19. You were in charge, first of all of the boat denial policy between April and August 1942, then you became Director of Civil Supplies from August 1942, to April 1943? – From August 1942 to May 1943, technically. Actually I was on leave for a month from April and for six weeks in February–March 1943 was engaged on preparing the Calcutta Rationing plan.
20. So your direct knowledge, of what happened is limited to that period, of 1942–43. Then you went as Commissioner Chittagong from May, 1943 to September 1943 and then as Presidency Commissioner from September 1943 to March 1944. Shall we take up the denial policy first? You have given us in this printed memorandum facts and figures and the conclusions you seem to draw are these: There was no serious adverse effect on cultivation? – I have no evidence of that either at the time or since. But I have seen it stated.
21. But it had certainly an adverse effect on the movement of foodgrains throughout that area. In fact the memorandum says ‘it throttled down trade into that area’. That is, the stuff in the areas could not move? – it had less tendency to move? – It had less tendency to move because very little was going in. The foodgrains trade being to some extent reverse trade, if you throttle down what goes into the area the natural tendency is to throttle down what is inside from coming out.

22. Throttling down trade into the area was the effect of the disappearance of the boats? — Entirely.
23. Throttling of trade in foodgrains out of the area was also due to the disappearance of boats? — Yes. The effect of that was perhaps more serious in 1943 than in 1942 because I believe the movement of paddy out of Bakarganj was not so heavy during the latter part of the rains, as during the early months of the year.
24. The throttling down of trade into the area was due to the disappearance of boats? — Yes.
25. So that the throttling down of the foodstuffs within the area was due to the disappearance of boats? — The effect of that was perhaps more serious in 1943 than in 1942. I believe that the movement of paddy, certainly within Bakarganj, is not so heavy during the latter part of the rains as during the early months of the year. On the other hand in 1943 the boats were scarce throughout the year, and it is quite possible that the effects of transport were more serious in 1943.
26. From the point of view of the province? — Yes, than in 1942.
27. Those areas are the surplus paddy areas? — Bakarganj, Khulna and 24 Parganas (Sunderbans) are heavily surplus areas.
28. And of course Midnapore in normal times? — Yes. I would also add Orissa because though we have no figures, there is evidence of considerable boat trade from Orissa up the Hooghly to Calcutta and possibly to mills in West Bengal. The whole of that was killed.
29. It comes up the coast? — Yes. It has been mentioned in the reply regarding statistics, but we have no figures.
30. And the third fact that you have mentioned is that it encouraged cultivators to hold on to their foodstuffs? — That is my view: it will be contested. The substantial cultivator could have done a good deal if he had been prepared to part with a little bit more than he did.
31. What was the effect on fishermen and the supply of fish? — Very serious.
32. Fish is a very important article of diet because the Hindus in Bengal do use more fish than elsewhere. What is the effect first of all on fishermen, river, and deep sea fishermen, and the effect on the supply of fish to other parts of Bengal? — I think the effect was most serious on the deep sea fishermen. Deep sea fishing off the coast right across to Bakarganj and Khulna and the open Bay of Bengal is carried on by Chittagong fishermen, not by local fishermen: and their operations were completely stopped.
33. You have no idea of the number of fishermen affected? — It could be obtained because, in the last few months, there has been an effort to reorganise the deep sea fishing. We have no figures here but, I think we can get them from Chittagong. I would suggest the best evidence would be that of Mr McInnery, Additional District Magistrate of Chittagong as he personally was at great pains to reorganise the fishing industry.
34. I am going to Chittagong so that he can be asked to have the information ready when I arrive? (witness undertook to do so) — The hilsa fishing above Chandpur was completely un-interrupted. I would find it very difficult to estimate how far our system of permits was effective below the denial line: I would find it very difficult to estimate the exact degree of fishing and how far we could allow them to function. But certainly fish was not particularly short in 1942, at least in Calcutta. It was only during 1943 and even later that the fish shortage has become so marked. My own estimate would be that the

effect of fishing was much more serious in the Chittagong area: the effect on supply was much more serious there.

35. These fishermen were naturally deprived of their livelihood? — They were deprived of their livelihood: they were compensated handsomely for the loss of earnings up to about 3 months income. That is generally speaking the maximum. But it is difficult to say the way that it worked out, because it is probable that the big boats belonged to matbor fishermen, that is, the head fishermen, and who actually got the compensation for the boats, is difficult to say. In other cases the boat would belong to the whole family. I think the experience is that certainly something more is needed now to rehabilitate them. If they had the compensation, they spent it on keeping themselves alive: they probably had very little opportunity of investing it in land and subsequent experience has shown that the boats in some cases have got to be given back to them: They cannot possibly buy those boats back. I think about January or February last, orders were issued governing the restoration of boats to fishermen either at concession rates or on loan or as a free gift. Summing up, it would be fair to say that, whatever the effect on supply in the districts of Khulna, 24 Parganas, Bakarganj and Tippera, it completely broke the economy of the fishing class and that can only be restored by free gifts of boats of Government loans or by concession rates of the sale . . .

[Omitted: Questions 36 to 71 — Ed.]

72. Can you give us some kind of the psychological effect on Bengal in general of the fall of Burma and the anticipated invasion of the Japs? — I think I should perhaps begin by pointing out that in March or April, 1942, the Central Government sent down what was called a 'Mission to East India' and the purpose of that mission was to try avoid chaos in the event of the evacuation of Calcutta. It was then expected that circumstances might arise when it would be necessary to save what could be saved from wreck, especially in the way of key industries, and ordinance factories. In fact the railways had already begun to move some of their key staff and offices and created a good deal of panic in so doing. Then in order to prevent complete chaos, the Central Government sent down this Mission with a view to co-ordinating the possible evacuation. That will, of course give some idea of the view taken at the time of the possibilities and the feeling in Calcutta. I was not in Calcutta during the Christmas of 1941 but I know that, at that time before Burma had actually fallen the trains leaving Calcutta were crowded beyond capacity with people trying to get away. People were making frantic efforts to get away from Calcutta and to get their valuables away. Large numbers of merchants and traders also left and I was told that the ordinary shop commodities in Calcutta could be bought for next to nothing. That was towards the end of 1941. When I returned to Bengal myself in April, 1942, there was an atmosphere of tenseness and expectancy in Calcutta. Calcutta was very largely empty. Houses were vacant. Bazaar shops had very largely moved off and a great deal of the population had gone out. In May 1942 there was a continuous 'stand to' for one whole night and as many buses as was possible in Calcutta were collected and driven on to the maidan in order to prevent an airborne landing by the Japanese. Though nothing actually happened, yet that was the action taken. I myself took my family to Darjeeling. When we arrived there one resident of the place said they were glad to see my family brought there because it made them feel safe:

Darjeeling itself was considered as not being out of danger of being cut off by Japanese invasion. I am giving a few actual facts. Families of Government officers were ordered out of the coastal and exposed districts in May, and necessary allowances were paid to Government servants to permit this separation. Valuable records were removed from southern districts of the province to safer districts in the north. Many other articles also were removed. I am quoting all these items only to indicate the effect on the general population. The general impression was that nobody knew whether, by the next cold weather, Calcutta would become the possession of the Japanese. I do not think there was any great panic prevailing in Calcutta after the unwanted people had been removed. There was little panic in the Districts, but there was a great deal of confusion. Transport was very unpunctual, choked up and very crowded, and the area north of Chittagong, in Noakhali and Tippera Districts was just like an active theatre of war behind the front. It could be compared with what we saw in France in the last war, except that there was no fighting but there was anxiety. Labour was fetching fabulous prices. Frantic demands were made on the Collectors to get large numbers of labourers. After the first air raid in Chittagong the position became so much worse that the Commissioners efforts to keep down rates of labour had to be abandoned. There was a considerable number of coolies killed in that raid and nothing but high money could get them to work. There was not very much panic noticeable among the cultivators, but there was a general atmosphere of tenseness, and very great stress. The burden thrown on the district staff was something quite incredible. In the case of one sub-divisional officer (he could be examined) I know he had to evacuate about 19 or 20 villages within 48 hours. He did it with expedition. I think it was afterwards discovered that it was a mistake, and it was really only wanted to evacuate some 6 or 7 Villages, the remainder being required for a defence zone. That is a particular example of the kind of burden that fell on the district staff. This sub-divisional officer is Raishahib Maitra formerly S.D.O. of Feni, and recently S.D.O. of Chuadanga. I should draw attention to one thing which is important. There was a continuous stream of refugees arriving from Burma. They were finding their way down through Assam, after the initial influx into Chittagong, and they were moving into the country. They were arriving diseased: bringing in a particularly virulent type of malaria, and bringing in hair-raising stories of atrocities and suffering. Numbers of them passed through Bengal to other areas. The natural effect of that on the people in Bengal, though they did not in the country areas show panic, was to feel that times were extremely uncertain and that terrible things might happen.

I would put August as about the month when Calcutta returned to some sort of feeling of security. The monsoon had set in, rendering a Japanese movement by sea unlikely and troops had been piling up and there was a large number visible in Calcutta. By about August there was a feeling of returning security. How far that was justified I would not like to say. The Arakan campaign of 1942-43 was not a success: Our troops got very badly mauled and came out with in very bad state of morale. There is no secret about that. Lord Wavell himself has published things on that campaign and I think it can be said with assurance that, if the Japanese had done at the end of 1942 what they did in the Arakan at the beginning of this year, we should have been in for a very bad time. Had such a campaign been accompanied by a move in along the coast, the rightness of the denial policy would have been proved.

73. What was the effect of that on the holdings of stocks by the cultivator? — It is extremely

- difficult to estimate. I will say this. The situation was tight. Even a marginal decrease in what was coming into the market was very serious.
74. That was in 1942? – No not in 1942. The trouble did not begin to appear until about November 1942 when very gloomy apprehensions started about the new crop. It was the first sign of real trouble; during 1942 I would not say the cultivator's holding was a serious factor. It became very serious in 1943. Even if it was an extremely small case of marginal decrease it was very serious in the then market situation. What the extent of such holding was I would not like to say.
75. So much for the general effect. You were appointed Director of Civil Supplies in August 1942. What was your staff? What was the Department in charge of Civil Supplies in August 1942? Burma then being lost. There was little prospect of exports from Burma. You had great difficulty in Calcutta in the fixation of these maximum prices which had dried up the trade and Calcutta was in great difficulty. What was the Department in charge at that time and what was your staff? – I have here a memorandum giving the details. I can give a brief summary now. The permanent Department which was in charge of this in August 1942 was the Commerce and Labour Department which had a Joint Secretary in general control of what they called prices. They were interested primarily in prices. He had one Assistant Controller who was a Deputy Collector and four special officers, of whom two were Sub-Deputy Collectors and that was all.
76. That was for Calcutta area initially? – It was supposed to be a provincial organisation. Practically the whole staff with the exception of the Joint Secretary and part time of the Assistant Controller, the whole of the staff really was working in Calcutta.
77. That was for controlling many articles? – Everything. There had been, in 1939, committees set up in districts and every district had an officer of its staff to whom the subject of price control had been assigned. But there was no effective provincial organisation.
78. For the enforcement of price control? – Enforcement and organisation as well of price control because enforcement without organisation is impossible. I would quote one instance in which the staff as it was then constituted despite its limitations, did very good work, in the case of salt. A shortage of salt. A shortage of salt developed in June 1942 . . .

83: Food Situation in Bengal (extracts from Casey's Diary dt 16.8 1944)

R.G. Casey's Diary, p. 28
[NMML]

August 16th

I saw Ethel, who tells me that he has just completed arrangements for getting 15,000 sq. ft. additional office space for the Civil supplies, which will entirely meet their current needs. He has also completed his arrangements for economizing (with Hollerth's machines) the Civil Supplies statistics. If he does nothing else here, these two jobs will have justified my bringing him to Bengal.

He is convinced that the unconscious and hidden loss and waste in connection with foodgrains in Bengal is appallingly high. He says that the value of Civil Supplies foodstuffs turnover is about 90 crores annually, out of which we may quite easily be losing 5 per cent in one way or another. Even if this is exaggerated, it is clear that we have to take strong steps to put this right, otherwise we will be criminally negligent.

I then saw Foskett. He is rather concerned about the 40,000 tons of gram (a sort of pea), which has a high protein content, which is what is wanted here. However, gram is unacceptable to the Bengalis, and the present off take is negligible.

Foskett regards his principal task as that of the creation of an Inspection and Control branch of the Civil Supplies Department which, he thinks should have a Weights, Sampling, and Infestation, branches.

As regards the Sampling side, he wants to get at least one expert with local knowledge of (a) wheat and flour (b) rice, and (c) other foodgrains — as full time commodity directors in charge of inspection and sampling of their respective commodities. He says that Ispahani and Shaw Wallace are to help him in finding the necessary local individuals.

84: Evidence by M.A. Ispahani, agent, *Aman* procurement scheme — before F.I.C. (dt 17.8.1944) (extracts)

List of Literature Item No. 2-b Nanavati Papers
[NAI]

Chairman Did you buy anything between the 18th and 20th of May? — Yes. All this was purchased between the 18th and 21st. Our Bengal stocks were about 10,000 maunds. The price in Bengal at that time was roughly Rs 32 a maund. That was the ruling market rate in Calcutta, and Government were given our Bengal stocks at an average price of below Rs 30 per maund. In brief I handed over at cost price all my goods and then commenced buying dexterously, and at full speed, buying very heavily outside Bengal for the government because I was of the opinion that prices, in the Eastern Zone had to level up at a height or reasonable level (or Rs 20) of Rs 25. There had to be the same price all over the Eastern Zone except for the freight difference. There were places where I was getting rice at fifteen rupees. At Arrah, I got it for fourteen, at Sargoja (Eastern State) at ten rupees. I went on buying at whatever price I could and gave it to the Government at the same rate. At times we were buying rice at 32 rupees at one place and at 10 rupees at places like Sargoja on the same day. During this free trade period I was able to buy 40 thousand tons for the Government. Then the Governments of the provinces I was operating on behalf of Bengal were up in arms against me and they felt that I had upset their markets. It was so. I had to do it because I was competitor there and possibly I had to pay a rupee or two more to induce the merchants there to sell to me an outsider. Although these merchants were under the control of their respective provincial Government, it was by the temptation of the higher prices that I was offering which induced them to sell me the rice and paddy and I bought these much against the wishes of the authorities concerned. In Orissa, about a lakh and 1 thousand maunds of

my purchases were frozen. Its average price was Rs 17.1.6 a maund and also about 36 thousand maunds of paddy were frozen. The average price of the paddy was Rs 9.6.6. Before I went to buy in Assam, all the stocks were requisitioned. As a result I could not purchase more than 30 or 40 thousand maunds of paddy. In Bihar we did very well. Everywhere our men were being prosecuted, our goods were being seized because the local authorities were out to throw us out of their provinces for reasons I have already given you.

Chairman: You bought about 1 lakh and one thousand maunds of rice in Orissa and you bought 36 thousand and 9 hundred maunds of paddy from the same province. Is it so? — Yes, my total purchase during the Free Trade period was about 40,000 tons secured from Orissa, Bihar, Assam and Eastern states.

Dr W.R. Aykroyd: More than half was from Bihar? — Yes. Our total purchases from Orissa, during the free trade period was 7 lakhs maunds, of this 5 ½ lakh maunds were from Orissa merchants in Calcutta. The Orissa Government allowed their own traders to despatch goods to Bengal but they would not allow the Bengal Government Agent to operate in Orissa. Several cases under Defence of India rule 81-A were instituted against us. In short we had to sit back in Calcutta and buy from the Orissa merchants. The Orissa merchants were allowed to come into Bengal. They profiteered and sold at 29 or 30 rupees a maund.

Chairman: The Orissa merchants sold to you? — Yes.

Mr S.V. Ramamurty: Did not the Government take that stuff in Orissa? — Up till now the Orissa Government have been making promises. They had consumed that stuff and are now trying to give something else in exchange. The grains that they have used was Bengal Government property, purchased by me in Balaspore and other places.

The other stuff you refer to was sold at high prices of 29 or 30 rupees a maund. Who brought it? — The Orissa merchants sold it to me as the Bengal Government Agent. The Orissa merchants came to me and sold rice at 30 rupees per maund. They sold at the market rate ruling here which was much higher than the rates ruling in the province of Orissa.

Chairman: But the Orissa merchants sold it to you in the open market? — Yes.

Was there no restriction as to where they should sell? — They preferred selling to us because we were more prompt in payments. We had better facilities for payments, clearance, storage etc.,

You bought at the market price? — Possibly 8 to 12 annas per maund cheaper.

Mr S.V. Ramamurty: What happened to the lakhs of maunds that you bought? — They are still in Orissa. They are going to give back these to us from Sambalpur.

Chairman: There was a long dispute as regards grain which was seized? — Yes, and later in November, the Orissa Government made a contract with the Bengal government. They had surpluses out of the purchases for cheap foodgrains shops. They sold a lakh of maunds at 20 rupees.

Mr S.V. Ramamurty: Has the Bengal Government paid to you for the quantities which the Bihar and Orissa Governments did not allow? — Yes. I have paid to the sellers also. I have handed over to the Bengal Government the Delivery Orders and they have paid to accordingly. One lakh and 85 thousand maunds were in Bihar, one lakh 10 thousand maunds of rice in Orissa, 36 thousand maunds of paddy in Orissa and roughly about 40 thousand maunds of paddy in Bihar, 44 thousands maunds of rice in Rewa state.

Chairman: Rewa State was not in the free trade area — They had their doubts. The Government of India had promised the Bengal Government that out of the surpluses of Rewa State a portion would go to Bengal. So the Bengal Government sent me to Rewa State to buy

the rice during the free trade period and when I bought the rice, Rewa State said 'No, you cannot do so'. The Bengal Government therefore, had to make a representation to the Government of India. As a result those stocks were released and were brought out of Rewa. Bihar has also issued the necessary permits. Bihar rice and paddy are still coming. Orissa is giving goods in exchange.

Sir Manilal B. Nanavati: At what rates did you make the purchases? — I gave you the average figures. In Rewa the average price was about Rs 11 a maund for rice.

Dr W.R. Aykroyd: What proportion of the rice that you bought did not reach Bengal? — About 10 thousand tons.

Mr S.V. Ramamurty: You mean that the amount which did not originally reach Calcutta. How much is still pending? — Less than, 5,000 tons, principally from Orissa because there is still a dispute about quality.

Roughly what was the total amount paid to you for these 40,00 tons? — I continued as their agent after free trade was discontinued. I bought 40 lakhs of maunds of foodgrains for the Bengal Government and we were paid Rs 7 crores and 28 lakhs.

Chairman: Up to what date did you continue these purchases? — Until the commencement of operations under the new *Aus* procurement Scheme.

Where did you buy from? — I was buying in the Eastern States and I was buying pulses from the U.P. after the free trade.

You were buying under license? — Yes, I was buying under licence given by the political Agent in Eastern States and by the U.P. Government. I was appointed Agent for the Eastern States and as such I have supplied rice to Bengal, Madras and even Cochin.

You were buying from the Eastern States even after the cessation of free trade period? — I was buying as a purchasing agent of the Eastern States and despatching agent of the Bengal Government. There was no commission paid by the Eastern States to me. The commission was paid by the Bengal Government. As the Eastern States appointed me their agent, I was able to buy in large quantities. This year I have bought for Bengal about 80,000 tons as authorised agent of the Eastern States. All the prices are fixed, the quality of rice is fixed by the Resident and the Bengal Government and specific prices were fixed for specific qualities.

Mr S.V. Ramamurty: I suppose you indicated to the Bengal Government the price at which your agents purchased in those areas? — Yes.

But the Bengal Government had no means of checking your prices? — Checking was done in Calcutta. The Calcutta prices were known in the market and other traders were reporting what was the price in Bihar. The whole market was in a chaotic state.

So, It was not possible for the Bengal Government to check up you prices? — Yes, because they were also independently buying from Bihar, Bihar merchants used to sell in Calcutta at Rs 30 a maund and I was advising a purchase of Rs 17, 18 etc., there was a wide gap between the prices ruling here and the prices in Bihar.

K.B. Mian Afzal Hussain: Were your accounts being audited? — Yes, vouchers were sent up to the auditors and they scrutinised everything.

Therefore, vouchers for purchases made by your agent in C.P. were sent up here and inspected by the auditors? — Yes.

Sir. B. Nanavati: You must have had about 100 agents in that case? — We had very few agents.

Chairman: How many agents did you have? — Wherever there was a mill we had no agent

because we bought direct from the mill. In other places we had purchasing agents who were local men. We had our own men as main agents and they purchased through local people.

Mr Ramamurty: That means, you had local men as sub-agents — Yes.

Sir B. Nanavati: What was the guarantee that these sub-agents gave you the correct price? — We had our own men there who went to inspect the stuff, arrange for transport, payment etc., and they were in a position to find out the exact price ruling in their areas.

Mr Ramamurty: Though your local Sub-agents might have arranged the sale your main agent actually took possession of it? — Yes.

Chairman: Your sub. agents must have bought from the cultivator — Yes.

Sir. Manilal B. Nanavati: Most of the sub-agents were traders? — Yes, of the locality.

Chairman: You have no reason to mistrust the honesty of your agents? — No.

Mr S.V. Ramamurty: The prices were so chaotic that you can only know the general trend — Yes.

Sir. Manilal Nanavati: You gave them permission to buy at any price? — No we used to control the prices from here. — But when you are in a hurry to purchase how can you control the prices from here — We gave then certain limits within which to make the purchases. We are never in a hurry to throw away money.

In the early stages you gave them a free hand? — Yes, a free hand.

Did the Government tell you at what price you should purchase? Did the Government give you any limits for purchases? Government did not give me any limits for purchase. I was fully authorised to buy at any price. I was then daily in consultation with the market. I bought at my discretion.

How long did you continue to buy at your discretion? — So long as we were operating outside Bengal and as long as free trade existed.

Chairman: You told your outside agency to buy at the price you dictated? You controlled the price and you say you had daily consultation with the Director as regards the price at which you will buy? — That was so invariably.

Sir Manilal B. Nanavati: Then you had no ceiling price? — I may say always, my prices were lower than the ruling rates in Calcutta.

Mr S.V. Ramamurty: Who was the Director? — Mr Ayyar.

Did you buy beyond the Eastern Region and Rewa during the free trade period? — Yes, I bought in the C.P.

How could you buy in C.P.? — That was because the Government of Bengal had been given a quota of ten thousand tons by the Central Govt. from the C.P. C.P. Supplied two thousand and then wrote to the Government of Bengal that they had no rice to give them. Bengal merchants were themselves holding more than 10 thousand tons of rice in C.P. and the Government of Bengal asked me to buy this rice and that they would try and prevail upon the C.P. Government to give this rice to Bengal against their quota which, of course, they failed to get. The C.P. government did not give it.

Chairman: But in the meantime you bought it; — I bought it, but, I had to cancel the deal. I paid for it but later had the amount refunded. Wherever there are such doubts and I feel I am not in a position to bring the rice, I do not pay the sellers.

Mr S.V. Ramamurty: Had you any reason to believe that free trade would extend to C.P. also? — Much later. Directly free trade started we did this transaction but much later sometime in early July it was reported in the news papers that there were a likelihood of free trade all over India. There were also very strong rumours to that effect.

Was your purchase in C.P. against the definite allotment promised to Bengal by the Government of India? — Yes, against the allotment made by the Government of India to Bengal which the C.P. Government did not deliver saying that they had no stocks. We brought it to the notice of the Bengal Government, that Bengal traders were holding rice there and asked whether we could buy same and whether they would prevail upon the Government of the C.P. to give the balance of eight thousand tons of our quota which was still unfulfilled. But the C.P. Government refused . . .

Chairman: The Bengal Government agent endorsed on the 20th May that two or three days before that you bought 235,000 maunds of rice.

Sir Manilal B. Nanavati: Under the free trade, goods to be imported had to be handed over to Government? — I could have brought this 235,000 maunds and sold to Government as a merchant at Rs 32 or Rs 35 or whatever price I wanted. There was no restriction then.

Is it fact that your Premier had announced that you had given a gift of many maunds of rice to Government? — I won't call it a gift. Yes, it is a fact that there was a difference of 37 lakhs or more.

Mr S.V. Ramamurty: You purchased it at Rs 14? — At an average of Rs 14.12.9 per maund — The whole of that amount for 235,000 maunds? — Yes.

From where did you purchase it? — From Orissa, and Bihar and Eastern States.

Don't you think uniformly that they should give their rice to you at Rs 14 to be sold in Calcutta or at Rs 32? Don't you admit it is apparently the evil of the free trade movement? — But prices started shooting up in Bihar and Orissa immediately. In Orissa they rose to Rs 26 or 27 and in Bihar they went further up to Rs 29.

On the whole you admit Bihar and Orissa were losers in this free trade? — Definitely, yes I admit that in Bihar and Orissa the price equilibrium was disturbed . . .

85: Casey's talks with Ishaque (extracts from Casey's Diary dt 25.8.1944)

R.G. Casey's Diary, p. 40
[NMML]

August 25th

Talked to Ishaque. His tasks include Jute Regulation (a 'life' task), Rural Reconstruction (a 'dead' task) and Agricultural Development (i.e. Grow More Food — quite a live task). Also, for Civil Supplies, he looks after Rationing outside Calcutta.

Agricultural Development means in effect at present, the stimulation of the use of waste lands-railway and road side lands made cultivable. He thinks there is 3.75 million acres now unused and if half could be used next year it would be a good result.

The Jute Regulation staff report to him (copies to D.M's) on non-technical lines on possible small irrigation and drainage schemes.

I asked him about the so-called Food Drive in June 1943. Each village in the 6000 Unions in Bengal was visited and surplus rice reported on in the hands of cultivators. 30,000 people were involved in the drive-half officials (Jute Regulation staff, clerks of all department) and

half non-officials (students, etc.) they were divided into squads so that 4 men tooth-combed each Union i.e. 2 men visited and reported on each 8 villages on the average. This was the start of the village Food Committees. Stocks and requirements were put down for all families with excess.

Nothing came of the Food Drive. No action was taken based on it.

Ishaque described the formation of Village Circle Union, Sub-Divisional and District Food Committees each one of which provided two representatives to the next higher Committee.

These Food Committees provide the machinery for the equitable distribution of kerosene, salt and sugar. He thinks they do this reasonably and fairly well. At any rate, there is, he thinks, no possible alternative to this machinery.

86: Food procurement and cooperatives (extracts from Casey's Diary dt 7.8.1944)

R.C. Casey's Diary, pp. 41-2
[NMML]

August 27th

I have lately been reviewing the state of the following activities in Bengal Agriculture (seeds, research, getting research results to the cultivators, pest research and control, numbers and quality of agricultural officers, demonstration farms) – Agricultural Statistics, Fisheries (riverine, estuaries and rural horticulture, research) Irrigation Drainage-River control District Administration Public Health (preventive and hospitalization). I hope that I never have to defend the record of achievement in Bengal on any or all these subjects.

Discussion with Aldridge. He is against the chief Agent System (who, he says, have got 2/3 of their rice from the rice mills) and would go nap on the use of Cooperative Societies for all the procurement. I told him that I could not face up to dropping the Chief Agent System entirely, until I was more certain than I am, that the Cooperative could handle the job. I am for the fullest use that can be made of the Cooperatives – side by side with the Chief Agent System. I'd even, in addition, given the Cooperatives a District to themselves.

Other matters that came out of the discussion.

- a) Insufficient liaison between Civil Supplies and Agriculture – e.g. ensure that Government gets all the rice from cultivators who had Departmental seed paddy – the yield of which, Aldridge says, is probably 200,000 tons.
- b) Consideration of a 'fixed price' policy for the Season announced, so that the cultivator knows what he should get, and isn't swindled.
- c) Possibility of our having to erect storage in the Districts for the Cooperatives, so that the Chief Agents can't edge them out on this score, by denying them storage.
- d) Consideration of savage sentences to those contravening Government Orders.
- e) Get a really good business man to run procurement for the Cooperatives (or possibly Aziz Ahmed* who was Registrar of Cooperative Societies?)
- f) Ration all the towns of any consequence in Bengal (77 towns of 10,000 people all over in Bengal).

- g) Possibility of our getting Countries, the man who rationed the towns in Syria and the Lebanon: A Frenchman (an accountant) aged 38–40, who was with Iraq Petroleum Company: Aldridge says he is really first class.

87 Regarding Governor's Conference (extracts from Casey's Diary dt 29.8.1944)

R.G. Casey's Diary, p. 44
[NMML]

August 29th

Governor's Conference began this morning, in Council Chamber, without Secretaries - i.e. Viceroy and Jenkins, Hope (Madras), Self (Bengal), Colville (Bombay), Hallett (U.P.) Glancy (Punjab), Twynam (C.P.) Rutherford (Bihar), Cunningham (NWFP), Dow (Sind), Hawthorne Lewis (Orissa), Clow (Assam).

All section 93 Provinces – except Bengal, Punjab, Sind, Assam & NWFP.

Everyone said their piece. Reasonably useful. Madras and Bombay inclined to be complacent and self-satisfied as regards their procurement schemes, and to exaggerate the extent to which they approach total procurement. Every one else expressed the Procurement opinion that Government monopoly of compulsory levy was impossible of achievement. People generally also agreed that requisitioning as a general policy was extremely dangerous. Also agreed generally that High Courts took an unhelpful attitude towards efforts to get deterrent sentences imposed for offence against the Foodgrains Control Order.

I am reminded of what I believe to be a fact – that at any Conference, the Convener should have in advance a clear idea of what he believes should be decided – which he produces at the right moment.

Governors of both Bihar and Assam said that Braund was probably right enough – if he had only taken little interest in their Provinces and not only in Bengal.

I emphasized to the Conference my great anxiety about the foodstuffs position in Bengal in 1945.

88. Memorandum submitted to the Famine Inquiry Commission by the Bengal Congress Parliamentary Party – (before September 1944) (extracts)

Nanavati Papers – Vol. I
[NAI]

... 3. The causes of the food shortage in India generally and in Bengal in particular in the year 1943 have been variously analysed and stated. ...

[Gives Wavell's speech to the Associated Chamber of Commerce Dec. 1943 — Not printed — Ed.]

5. On the 15th September 1943, in course of a statement in the Bengal Legislative Assembly, Hon'ble Mr H.S. Suhrawardy, Food Minister, Bengal, set out the reasons as under.

- (i) Failure of the *Aus* crop of 1942.
- (ii) Failure of the *Aman* crop of 1942-43, the shortage amounting to about three million tons,
- (iii) Havoc caused by cyclone and floods in the most prolific areas of Midnapore and 24 Parganas districts,
- (iv) Destruction of the standing crop in several districts by a kind of pest just before harvesting,
- (v) Boat denial policy of Government in 1942 interfering with the cultivation in certain areas, with the movement of commodities and also with deep-sea fishing.
- (vi) Evacuation of the coastal areas — throwing a considerable amount of land out of cultivation and also throwing a large portion of the population on other areas which had barely enough for their subsistence,
- (vii) Influx of refugees from Burma and Arakan into Bengal.
- (viii) Influx of industrial labour from outside Bengal in large numbers,
- (ix) Loss of imports from Burma representing roughly 200,000 tons per year.
- (x) Putting out of cultivation some Lands for aerodrome construction, etc., thereby also creating another set of non-productive consuming population whose number was added to by labourers from outside Bengal.
- (xi) Large influx of consuming population in the shape of the military.
- (xii) Great shortage of normal imports from other provinces to supplement Bengal's resources.

6. We accept the above as a fair analysis of the causes but we are of opinion that the emphasis on various causes has not been properly placed and that the responsibility of Government in accentuating the disaster has been minimized if not ignored.

7. On the 17th February 1943, the Chief Whip of the Bengal Congress Parliamentary Party, while moving a comprehensive amendment to the special motion on supplies and distribution of foodstuff, etc., debated in the Bengal legislative Assembly, invited pointed attention to some of the instances of administrative failures. In course of other debates on the handling of the food situation and problems connected therewith in the Bengal Assembly on the 1st March 1943, 10th March 1943, 12th July 1943 and 17th September 1943 further acts regarding the maladministration were revealed.

8. Broadly speaking it was argued that the genesis of the food crisis in Bengal in 1943 must be traced to the denial policy forced upon a large part of fertile rice growing tracts in the maritime districts of Midnapore, 24 Parganas, Khulna, Bakerganj, Noakhali and Chittagong early in 1942 under the direct responsibility and initiative of the then Governor of Bengal, Sir John Herbert. As a result of this policy agents of Government armed with requisite authority compelled people not only to surrender their country boards which, in many places, provided the only means of communication and transport, but also to part with their 'surplus' rice or paddy which were taken away from those districts. Large and fertile agricultural tracts in these coastal districts were also taken over by the military at short notice for alleged requirement

of defence operations, and the inhabitants were evacuated *enmasse* without adequate arrangements to settle them on their usual vocations elsewhere. These measures, carried out in most cases with callous indifference to the sufferings of the people led to virtual collapse of the economic life of a fairly large area and gave rude shock to public confidence in the good intentions of Government. The widespread loss of confidence, referred to by Lord Wavell as the first main cause of the disaster, had its root in this denial policy for which the responsibility was entirely with the then Governor and his immediate official advisers. In the first week of April, 1942, the Leader of the Congress party along with other leaders were invited by the Governor to a conference where some of the plans were revealed, and it was even at that conference the Congress Party raised a note of warning and emphatically pointed out the inevitable sufferings and economic dislocation that would follow. Promises were held out assuring adequate supplies of foodgrains to the areas so denuded in case any necessity for the same arose in subsequent months, but practically nothing was done to relieve the distress that followed not long thereafter.

9. The Congress Party of course, recognize that among the other causes of the shortage the more important were

- (i) Failure of crops in 1942-3.
- (ii) Havoc caused by cyclone and flood and through pest and blight in certain areas.
- (iii) Loss of imports from Burma,
- (iv) Normal increases in demand through additions to the population of Bengal on account of military concentrations, influx of large number of industrial and other labour and refugees from Burma and Arakan.
- (v) Restriction on cultivation due to the taking over of large tracts for construction of aerodromes and for other military purposes in various parts of the province.

11. In March 1942 Burma fell to the enemy and soon after the same it became evident that either due to actual shortage of foodgrains or through the withdrawal of stocks from the market as a result of general panic, supplies would not be maintained relying on ordinary machinery of trade alone. Prices began to rise slowly but steadily. And yet neither the Government of Bengal nor the Government of India seemed to take any serious notice of the signs.

12. It was not until July 1942 that a Central Food Advisory Council was set up by the Government of India and shortly thereafter the Government of Bengal brandished their first measure of intervention to deal with the food situation, in the shape of a price control order to come into force from the end of that month. This half-hearted measure unconnected with any scheme for procreation of supplies was followed in subsequent months by a series of steps all of which proved utterly futile and some of which rather precipitated the crisis. The man-made character of the Bengal Famine stands out in bold relief if one recounts these measures. They were throughout marked for a thoroughly inadequate appreciation of the needs of the situation, an utter disregard for the interests of the bulk of the population exclusive of those engaged in essential services and war industries, a complete lack of any comprehensible planning and a total isolation from the public and the leaders of public opinion including even the Ministers of the Government. As each measure taken led to further deterioration in the situation, new offices were created, manned mostly by British officials and non-officials whose sole anxiety appeared to be in the maintenance of liberal supplies for the new privileged class directly engaged in war effort irrespective of its consequences on the general public and these new

officers continued in their pastime of trial and error till thousands of the people were actually thrown into the jaws of starvation, destitution and death. Profiteering and black marketing grew rampant and under the very nose of the Government hoarding by big merchants, industrialists and agents of Government went on unchecked.

13. Over and above these, inspite of repeated warning from various quarters, Government kept themselves deluded with the so-called statistics of food supply and continued to rely on thoroughly undependable data regarding the available surplus of foodgrains in the province. They made little attempt to check exports out of Bengal to the Middle East, Ceylon and Cochin and to stop large purchases by the military, the railways, the employers of industrial labour and other Government or semi-Government institutions and organisations.

14. **Congress Party's Contribution:** We take this opportunity to invite the attention of the Famine Inquiry Commission to what the Congress Party in the Legislature did in seeking to bring about relief to the people during the fateful year 1943. The Congress Party was at that time practically the only body to make ceaseless and disinterested endeavour to urge the adoption of comprehensive measure to deal effectively with the situation. The Muslim League, which was then out of office, also made common cause, but unlike the Congress Parliamentary party, their principal object of attack was not the food situation but the then ministry of Mr Fazlul Huq and Dr Shyama prasad Mookerjee. It may here be mentioned that one potent factor that aggravated the disaster was the attempt of the party in power in the Bengal Government to make use of their position as a party Government in handling the situation and their virtual refusal to set up an all party machinery of dealing with the food problems, in appreciation of its grave National importance . . .

[Omitted: Paragraphs 15 to 21 – Ed.]

22. The Government, as was seen later on, took lessons from many of these suggestions but were still not prepared to revise its main outlines of policy, namely, procreation of supplies for the essential workers only in disregard of the needs of the general public and callous indifference to public opinion and to the opinion of Leaders in Opposition, however anxious they might have been to offer co-operation in tackling the food situation.

23. The declaration of free trade within the Eastern Region and withdrawal of price control did not bear the results anticipated and the warnings of the Congress Party once more were justified. Prices in the adjoining provinces of Bihar, Orissa and Assam suddenly soared up and their respective governments felt very unhappy. They, thereupon, began to actively discourage exporters to Bengal and in many cases actually prevented the merchants, local as well as from outside, to remove stock out of their provinces.

24. The Government of Bengal, at that state, had appointed Messrs. M.M. Isphani, Ltd., as the sole buying agent throughout the Eastern area and made liberal advances to that firm, amounting ultimately to more than six crores, – against their purchases, whether actually delivered to the Bengal Government or not. This action evoked strong criticisms specially because one of partners of that firm is a pillar of the Muslim League, and a prominent supporter of the Government was made to scrutinize the purchases and check the deliveries of that firm before large sums were advanced. The hectic purchases by various traders and particularly by the Government Agents within the province forced up prices to an unprecedented level and whatever little stock was available in the province soon found cornered in the hands of a few parties over whom Government either did not or could not exercise effective control.

25. By September 1943, the situation had become desperate, although Governments, both

in the Province as well as at the Centre still persisted in their mealy-mouthed promises of relief. The price of rice in most part of Bengal had soared up to such a level as to render it beyond the reach of the people and the horrid sights of destitution and death in different parts of the province evoked strong feeling from many quarters. At first Government attempted to keep down these outbursts through a rigid censoring of the Press but the facts of death and the picture of starving million were too widespread and too naked to every eye to be shut out from other parts of India and of the world. 'The Statesman' rendered invaluable service to the province in boldly exposing the horrors. Public sympathy began to be evinced from various provinces of India and even from countries outside and the Government was forced to undertake large-scale relief operations . . .

89: Memorandum submitted by the Bengal Rice Mills Association (before September 1944) (extracts)

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22. The Association would in this connection refer to the panicky requisitions which were resorted to by Government two days after the fourth air-raid in Calcutta. A large number of people was going away from the town and naturally some retail dealers also fled away. Government did not take into consideration the fact that the rice-mill owners were not retail dealers who could run away with their mills and stocks governing. Instead of sending for the mill owners and seeking their co-operation to maintain supplies in the city, Government sent round a large number of police staff who descended on the mills without notice and sealed the godowns of a large number of mill-owners. The action destroyed all the faith the mills still had in Government's good dealings. The usual channels through which the mills supplied the Calcutta market immediately dried up and has not been restored ever since except for a brief spell in the middle of 1943 when restrictions having been withdrawn the mills could get some small supplies from here and there for the benefit of the society they were serving. It may be also mentioned incidentally that Government took a fairly long time to settle the prices of the stocks which they had seized on the 26th of December and in fixing the prices. They paid the mills at rates which were scarcely fair.

23. Towards the end of January, 1943 Government issued orders placing further embargoes against exports on a number of districts. A Food Grain purchasing Officer was appointed and he was given the authority to issue permits for exports from the most of the closed districts. The experience of rice trade has been that when people approached the F.G. P.O. for obtaining permits, the offer of permits in most cases was conditional on the sale of the imports to the F.G. P.O. himself. This meant that the natural trade channels of Calcutta found their sources of supply entirely blocked. Black markets are naturally despised by all right thinking men and the Association strongly resents the action of people who in the name of trade operated in the black market. There is, however, an extremely strong and unfortunately well-based feeling amongst a large majority of the people of Calcutta that if at this juncture, black marketers had not smuggled foodstuff into Calcutta for sale to the public through the black markets half of the population of Calcutta would have starved. The Association can state on reliable authority

that even highly placed officials of Calcutta could not get any supplies from the markets. Practically all the purchases made by the F.G. P.O. went to feed what were called the essential Industries and essential priority consumers and partly to feed the cyclone affected people of Midnapore. If the commission were to obtain the statistics of the rice that was released for the consumption of normal public in Calcutta, the Association is sure that the commission will find that Calcutta was maintained not by the supplies which Government gave them but by those which were smuggled into the city by the much maligned parasites of the Society viz: The black-marketers. The Association would like the commission to obtain straight answers from the departments of the Government concerned as to the justification of their embarking into the policy of embargo cum purchase. The Association asserts that Government had neither knowledge nor transport nor organisation to effectively distribute supplies in all the deficit areas and for them to have embarked into a policy of purchasing was one of the greatest economic blunders of history. The Association would in this connection invite a reference to the famine code in which it is expressly laid that 'private trade must not be interfered with in times of distress and scarcity and furthermore that on no occasion should Government undertake the movement of foodgrains in times of distress. Famine code actually imposed on Government the duty of helping private trade with finance and transport. Instead of this, Government actually prevented trade from operating first by laying those embargoes and unscientific price restrictions.

24. Now about the purchases which were made by the F.G. P.O. and later on under his authority by the District Magistrates. The most natural thing in handling public money at a time of such distress would have been for government to advertise in papers asking all and sundry to make their offers to stated officers and promising them assistance in the shape of transport etc. They might have issued secret instruction to their purchasing officers asking them to accept offers upto certain limits or in accordance with certain principles. Instead of this, individual offers were taken from individual persons and sellers without any published announcement or any published offer or without attempting any competition amongst traders to supply at lowest rates. If the Commission were to scrutinise the purchases which were made they would find that many of the purchases were not made at the most advantageous prices possible. These transactions naturally gave rise to discontent amongst trade and allegations about favouritism and worse matters were openly made in various trade circles.

25. Shortly after this Bengal entered into an arrangement under what is called the basic plan for the procurement. Instead of calling for tender and distributing the work at any rate to a fair number of responsible traders Government decided to give the agency for all these purchase to a single firm. Not that the Association wants to say anything about the particular firm but when Government of the province was in need of supplies and wanted the assistance of trade in the procurement, the trade was justified in hoping that the patronage of State should be conferred on a fairly large number of firms of responsibility and standing. It must be remembered that times were extremely difficult for the trade, and the traders who were trying to go straight and act above board had already been made to suffer losses by the various orders and restrictions of authorities. In the circumstances it was only natural for the trade to expect that instead of the fate of 63 millions of Bengal people being left to the efficiency or caprice of a single firm it should be well distributed so that in case some firms fail to discharge their applications properly others will still be there to save the people of Bengal. The appointment of a sole agent therefore created a great psychological effect amongst trade which naturally stood in the way of Government's getting their whole hearted co-operation in later

stages. The trade could then have legitimately said that while during distribution of patronage Government allowed it to flow in one single channel, in times of difficulty and in the matter of imposing restrictions they wanted all the other in the trade to suffer. This was from the point of view of justice and fair play extremely unwise.

90: Memorandum submitted by Bengal Chamber of Commerce (before September 1944) (extracts)

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10 A careful perusal of the observations made in the following paragraphs will make it clear that none of these could have singly brought about famine in Bengal. Some of them have played a comparatively major part, while others have served only to accentuate and aggravate the situation. It is also not possible to examine all the factors singly as in many cases they over-lapped one another. The Committee, therefore, do not propose to examine at length all these factors but to concentrate attention on what they consider the most important among these.

11. *Government Complacency and Administrative Bungling* – Among the factors as described above, which allowed famine to get its grip over Bengal, criminal callousness of the Governmental Authorities in India must rank first. Great Britain began to plan her food economy in 1936. As the British permanent Food Secretary, Sir Henry French recently disclosed, Britain had everything ready for orderly management of the food front when the war came and the poor men there are getting now better food than they used to get before the war. The fact that a country self-sufficient in food supply only to the extent of 33 per cent could achieve this objective, was due to the active steps that Britain had adopted as soon as the international situation showed signs of a possible worsening. In fact, insulation against any possible food problem has characterised the war efforts of almost all the belligerent countries some of which were deficient in their food supply even in normal times. There existed nothing like a food crisis in these countries even by the end of the year 1942 when Bengal was well nigh prepared for the famine of 1943. Food rations were planned to secure necessary caloric requirement for each individual of the population in all these countries.

12. The Committee would like to draw pointed attention to the difference in the attitude of the British and Indian Governments towards the problem of food when the international situation began to show signs of worsening. This difference is to be attributed primarily to the absence of a national Government in India. The absence of a food policy at the beginning of the war, the complacency and bungling of Governmental Authorities which precipitated the famine, the heavy toll of death that has had to be paid, the lack of adequate appreciation of the after-effects of this famine that the country has experienced and the absence of adequate measures to repair its ravages, – are due in a large measure to the absence of a national Government, which could not only be expected to evolve a food policy for the whole country and institute necessary measures for ensuring food to the people but also to instil confidence into them in a grave emergency. The Indian commercial organisations had never ceased to impress upon the government the imperative necessity of resolving the political deadlock in

the country, and they cannot too much deplore the fact that the stalemate should still be allowed to continue.

13. The Committee of the Chamber would like in this context to draw attention to the fact that while, as could be evident from the various security measures taken from time to time by the Government, the possibility of India being attacked by Japan was fully taken into account, yet the Government completely ignored the desirability and the need for instituting measures to ensure sufficient food for India's population. On the contrary, even when the enemy was on India's portals, the so-called constitutional aspect of food was being zealously debated. The Act of 1935 was allowed to contribute a quota to the catastrophe of 1943. The long delay in setting up a separate Department for Food at New Delhi has been frequently mentioned as an important factor explaining the lack of any Central policy in regard to food. Upto a certain stage, the Government of India were not even cognisant of the Food Problem in the country, and the only concern that they expressed was in respect of the procurement of foodstuffs for the Defence services of India and Overseas. It was not until April 1942, that Food Advisory Council was set up followed a few months later by the creation of the Food Department. Even then the failure of the first Basic Plan is a significant pointer to the inability of the Food Department, to secure the co-operation of the autonomous provinces in evolving a coordinated plan. Between 1939 and September 1942, Delhi held six Price Control Conferences, but the lines of policy criss-crossed so crazily that schemes coming out of those conferences soon appeared to be a mass of contradiction.

14. It is also necessary to mention that the authorities, both at the Centre and in the provinces had, in their misguided enthusiasm, imagined a contradiction between the prosecution of the war efforts and the provision of food to the people. While the Government of India, as already mentioned, even refused to admit the existence of the Food problem until after the middle of 1942, the Government of Bengal, by their Denial Policy, actually engendered the problem by subordinating the question of food supply to the so-called war measures. It was not until the Food grains Policy Committee reported in September 1943 that an official recognition was given to the principle that 'the food problem is a part of the war efforts'.

15. Even when the Food Department was set up, the Central policy remained for a considerable time indeterminate. The frequent changes in the personnel at the head of the Department were partly responsible for this and the pressure from the provinces and their recalcitrance often led to adoption of hasty measures and their premature modification. Reference has already been made to the failure of the Basic Plan. But this was not the only factor indicating the failure of the Centre to follow any policy of practical, efficient and bold administration. The inauguration of the 'Free Trade' and its subsequent reversal were also a typical instance of the weak kneed policy followed by the Government of India. Some idea of the active steps taken by the Eastern provinces to circumvent the Free Trade Regime inaugurated by the Central Government in May 1943 is given in a later section of this Memorandum.

16. So far as Bengal is concerned, the same lack of a uniform policy and a change in the personnel both in the Ministry and in the Civil Supplies Directorate characterized the Provincial Government's handling of the problem. The peculiar political situation in the province and the panic into which the authorities allowed themselves to be stampeded were the background against which their policies were formulated in supreme disregard of all advice and suggestions put forward from time to time by the public. The Committee have, in appropriate places in

the following paragraphs, referred to the suggestions which they had tendered to the Government in several occasions, but most of which were rejected by the Government.

17. It is also necessary to mention that for a considerable time after the commencement of the war, the problem of the supply and price of rice was the administrative responsibility of the Chief Controller of Prices who also happened to be the Secretary of the Provincial Commerce Department. It was not until August 1942 that a separate Department the Directorate of Civil Supplies was set up and it was again only in April 1943 that a Minister was for the first time placed in sole charge of the Department. The Committee would also mention, in this connection, the frequent changes in the personnel of the Department. Mr L.B. Pinnel, who had been appointed the first Director of Civil Supplies in August 1942 was early next year placed on a special duty, the vacancy thus caused being temporarily filled by the appointment of Mr Justice Roxburgh as the Director. The latter, however, soon went back to the High Court and, though Mr Pinnel again became the Director, he did not long remain so, having been succeeded in April 1943 by Mr N.M. Aiyer. Later on, a new post was created that of the Commissioner of Food and Civil Supplies who the Committee presume, is an officer superior to the Director. The Committee made a special reference to this aspect of the problem in order to draw attention to the frequent changes in the personnel of the Department charged with maintaining the supplies of essential commodities – a policy which in their opinion contributed in no small measure to the lack of grip by the Government over the situation.

18. It is not, therefore, surprising that for a considerable time upto even the middle of 1943, Government policy in regard to the problem of food was weakened and haphazard. No proper appraisal of the situation was made either by the Government of Bengal or by the Government of India and they tried to meet the situation as and when it developed by what might be called the trial and error policy. While they allowed steady exports of rice from the province despite an influx of population both from Burma and from other provinces of India and cessation of imports from Burma, and while they remained absolutely oblivious of the effects of inflation, they actually helped the upward spiral of prices by resorting, from time to time, to policies which were ill conceived and ill-executed. The chief among these were –

- (a) The denial policy;
- (b) Permission to large industrial employers to purchase huge stocks of food grains for their workers;
- (c) Uncoordinated purchase of huge stocks by the Army and semi-Government Institutions like the Railways, Port Trust, etc.
- (d) Irrational and unscientific price policy without any control over supplies.

19. *Denial Policy* – The Committee do not question the propriety of initiating measures to deny all facilities to the enemy who had by that time completed the occupation of Burma. At the same time, the Committee cannot help observing that the Government was often stampeded into taking hasty measures and while their urgency or appropriateness as denial measures were doubtful, they undoubtedly, led to a deterioration of the food economy of the province as also to the undermining of public morale. The Committee regret that, despite repeated representations made by them to the Government at the time, the Government of Bengal paid little attention to them.

20. The Boat removal policy inaugurated by the Government of Bengal in April 1942, contributed to the famine by:

- (a) Vital interfering with the cultivation of the Char lands and various Islands lying at the mouth of the Delta, which were cultivated under a peculiar system by visiting boat dwellers;
- (b) Dislocating the transport system of the riverine districts, particularly of the districts like Barisal, the granary of Bengal, which possessed not an inch of Railway line and very few through roads;
- (c) Putting about 1,25,000 boatmen out of employment (taking 5 men on an average per boat for 25,000 boats, which according to a statement made by the Hon'ble Sir J.P. Srivastava in the Central Assembly on the 18th November 1943, were removed from the coastal areas. The Committee understand that a huge number of these boats was actually destroyed).
- (d) Hampering fishing in many areas with consequent diminution in fish supply and miseries to the fishermen. In reply to a question asked in the Central Assembly, on the 31st March, 1944, Mr C.M. Trivedi admitted that the fishing trade undoubtedly suffered as a result of the boat denial policy but he pointed out that adequate compensation was paid to the fishermen. The Committee have no information on this point.
- (e) Creating panic in the mind of the masses by giving scope to wild rumours;
- (f) Hampering the production of salt in the coastal areas and its movement with consequent hardships on people engaged in the industry.

It appears that the acreage under rice in Bengal fell from 23,843,000 acres in 1941-42 to 23,142,000 acres in 1942-43 (vide: 'Indian Trade Journal' April B 1943). It is for the Commission to judge as to what portion of the fall of 7 lakh acres in the acreage of rice was due to the boat removal policy and the evacuation of some coastal tracts.

21. In a Press Note which was issued by the Government of Bengal on the 6th April 1942, explaining their policy regarding the removal of country boats from the coastal districts; they emphasized its importance in hindering any possible advance by the enemy . . .

[Omitted: Details of this policy and the hardships it inflicted on certain coastal districts of Bengal where boat was the only form of transport – Ed.]

22. The Rice Denial policy and the hasty method adopted for its administration was another serious blunder of the Government. Apart from the inherent defects in the scheme itself the way in which the policy was carried out was fraught with great potential danger. In a letter which the Committee of the Chamber had addressed to the Government of Bengal on the 20th April 1942 (copy of the letter given in Appendix I),¹ they pointed out that this policy of purchase of huge quantities of foodstuffs by the Government might ultimately involve them in far reaching complications. It was likely that a sudden tendency for prices to rise as a result of Government entering the market as a big purchaser might induce the poorer sections of the community to sell out their crop, even though they might not have any surplus with danger of starvation later on: on the other hand persons better placed were likely to be tempted to hoard up and immobilize stocks which would otherwise be available for the market.

23. The first indication of possible adoption of the Denial Policy was given by the late Sir. John Herbert, the then Governor of Bengal, in his address to the Bengal Legislative Assembly on the 2nd April, 1942. Explaining the *raison d'être* of the Policy, he pointed out that there were certain districts in which production of paddy was in excess of the normal requirement of those districts and that in case these surplus stocks of grain fell in the hands of the enemy

there might result distress and even famine in those districts which did not produce sufficient for their needs. While announcing that the Government had, therefore decided to take measures to remove the surplus stocks from the districts concerned, he also gave an assurance that it was not intended to remove any paddy or other foodgrains which were needed for the normal requirements of the civil population. Referring to this aspects of the matter, the Committee of the Chamber in their letter of the 25th April expressed the view that, in determining surplus food crops in a district, absolute reliance should not be placed on official figures of acreage, yield of rice, etc, in any district, as these were in most cases collected by ignorant village chowkidars and others having neither any training nor an adequate appreciation of the purpose for the collection of data. The Committee, therefore suggested that, in making any decision regarding the surplus available, trade estimate, which had often been found to be more dependable in the past, should be taken into adequate consideration, while due account should also be taken of the uncertainties of rainfall, floods and weather conditions, as also of the amount already exported out of the district through ordinary trade channels since the last harvesting season, and of the requirements of seed. If this was not done, the Committee apprehended that purchases on account of the Government might adversely affect a district which might already be suffering from deficit, and also result in a shortage in supply in a district which had a comparatively small surplus. In regard to the location of the storing centre, the Committee drew attention to the possible difficulties which the Government might experience in arranging the movement of surplus food stocked in a central place, to a deficit district as speedily as was desirable when such movement would be found necessary. On the other hand, they did not consider the partial storing of surplus foodgrains in particular deficit districts, even though falling under the category of danger zones, to be inconsistent with a denial policy, for in extreme cases it was always possible for the authorities to destroy such foodgrains as were likely to fall into enemy hands. Otherwise, the non-availability of essential food supply to civil population of any area might entirely shatter public morale and might frustrate the very objective of the denial policy for resisting enemy aggression.

24. It is possible for the Committee, having no official information at their disposal, to state how far the suggestions made by them had been accepted by the Government, or to what extent the entire quantity of denial rice was later on, with the gradual improvement in the war situation, made available for civilian consumption within Bengal. It has, however, been frequently mentioned that a certain percentage of this quantity was exported, under Government auspices, to Ceylon and, further, not a small portion of the denial rice had become inedible and was wasted. The Commission will no doubt enter into all these questions, and the Committee do not propose to pursue them further.

25. There are, however, two aspects of the matter to which they would like to refer in this connection. In the first place, there is no doubt that the action of the Government Agents in purchasing rice in the mofussil had set in force calculated to raise prices. In a Communique issued by them on the 23rd June 1942, the Government of Bengal themselves admitted that they had directed their Agents to purchase rice at market prices, subject to a maximum rate of Rs 6.4.0 a maund for Balam rice.

26. In the second place, the Committee would strongly urge the Commission to consider whether, in view of the military situation prevailing at the time, there was indeed any justification at all for adopting the Denial Policy, and whether the Government without running any large risks could not have delayed the execution of the policy by a few more days or weeks. The Committee do not presume to speak with authority on this matter, but the question whether

the programme was actually decided upon the advice of the military authorities or, whether the Government took action solely, on their own responsibility, has also to be clarified. The Committee would also point out, in this connection, that in his Address to the Provincial Assembly, referred, to above, the late Sir John Herbert had himself stressed the necessity of maintaining the morale of the people which, according to him, was as important, if not more, in a situation with which Bengal was placed, as guns and aeroplanes. (Vide Page 273 of the Debates). The Committee are aware that compared to the total production of rice produced in Bengal, the quantity actually purchased in pursuance of the Denial policy 30,719 tons, according to a statement made by the Hon'ble Sir J.P. Srivastava in the Central Legislative Assembly on the 18th November 1943 – was small. But the fact that it was the Government who were buying in the market with the object of denying facilities to the enemy was sufficient to induce both a rise in prices and a feeling of panic among the general public – a feeling which was further fostered by the Boat Denial Policy. It was, therefore, natural that the people should be encouraged to hoard more than even their normal requirements in order to guard them against any possible enemy occupation of the country – a possibility which was openly canvassed by the highest dignitary in the province.

2/. Looking at the matter from this distance time, it is, in the opinion of the Committee, possible to argue that the Denial Policy, both in respect of rice and boat, had played a very important part in preparing the ground for the famine. It certainly let loose forces which could doubtless have been brought under control later on by a judicious policy – but there can be no gain saying that the ball was set rolling by the formulation and the execution of a Policy which though designed to deny facilities to the enemy, actually culminated in a denial of food to the people of the province. . . .

1. Not printed.

91. Evidence by Krishak Praja Muslim Leaders – dt 1.9.1944 (extracts)

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[NAI]

Humayun Kabir, Jalaluddin Hashmi and Shamshuddin Ahmed

1. *Chairman*: You summarised the causes of the shortage and one cause you did not mention, i.e. the short crop of 1942. *Mr Hashmi*: It originated in 1942.

2. The *aman* crop reaped in December, 1942 was a short crop. Was that a cause of the shortage? – In some districts it was short.

3. It was not short throughout the Province? – On the average it was short.

4. We were told that it was 6.9 millions as compared with the normal of 8 millions tons. Do you think that was cause? You do not mention it? – *Mr Humayun Kabir*. There is some reference to it when we say that at one time a bumper crop was expected but after the cyclone of 1942 these expectations were defeated. It is the shortage that we imply.

5. You have not mentioned it in the summing up? — No, but it is in the text. We had to do the memorandum fairly quickly as we had no time and we would like to supplement it with some further causes.

6. You talk about thousands of prisoners being fed. What are these prisoners? — There were prisoners in Darjeeling and a large camp in Ranchi.

7. Ranchi is not Bengal? — But foodstuffs went out of Bengal into Bihar.

8. How do you know? — There were movements of food from here. You will notice that in December 1942 or perhaps early in 1943, Mr Fazlul Huq made a statement either in public or in the Assembly that he had agreed to some crop being sent from the Western District of Bengal to feed Bihar.

9. It was sometime in 1942, because Bihar coalfields were being fed with rice from Bengal and Darjeeling was supplied with rice from Purnea, there was an endeavour to maintain this normal channel of trade? — This is what we had in mind.

10. Do you want to stress any point particularly? — Yes. We have some point with regard to the policy of the present Ministry after it came into office.

11. Have you no criticism of the earlier ministry at all? — You will find they are there. They had one saving grace. They admitted that there was a shortage. It is our contention that this denial of shortage was a great blunder. It was not possible to solve the problem by simply denying the shortage.

12. You think if there was statement that there was a shortage it might have helped the situation? — By securing outside help. At that time people were dying in thousands in Calcutta.

13. Your statement was about April/May. There were no deaths at that time. — Actually hunger marches had begun even in March.

14. People did not start dying till about August? — There was a hunger march on the Assembly in March. Private relief organisations were started in the end of June or in the first week of July. We started certain canteens in early July.

15. The statement was made in May? — At that time people were coming to Calcutta. You could see them all along the pavement and private charity was trying to meet the situation, but it was not possible for them to deal with such a colossal problem.

16. The first charge you make against the Nazimuddin Ministry is that they preached a position of plenty when there was great scarcity? — That is the first. The second is with regard to the food drive in June whose only result was driving the stocks from the rural areas into the black markets of Calcutta and Howrah.

17. Against that won't it be argued that having regard to the difficulty, it would be impossible to transport the stocks? — But a large number of boats were operating.

18. But we have the allegation that the denial policy reduced the boats to such tremendous extent; the presence of boats to bring these enormous quantities from the mofussil to Calcutta is rather impossible? — It is true that a large number of boats were destroyed. But the few that remained especially in the southern district were put strictly under Government control and Government agents there could use them if they wanted to.

19. It is not a question of Government agents. You said the food drive in June 1943 resulted only in large stocks being removed to Calcutta? — I said to the hoarders in Calcutta.

20. That means that a lot of people were moving it to Calcutta? — It could operate in two ways. Many hoarders had branches and godowns all over Bengal and a certain amount of stock was kept in the mofussil areas, and some were moved to Calcutta.

21. Against that argument it will be said that transport was difficult and it would be

extremely difficult to move large quantities to Calcutta? — But you probably know how the transport problem here is managed. You can get transport sometimes if you are a private party and there may be no transport even if Government wanted to get it. Some times people manage to get wagons even against rules.

22. Your allegation is wholesale removal? — To the hands of the hoarders. We would suggest that to that extent it was a large scale operation. But what was the percentage of the quantity move, or whether it came to Calcutta or was kept in different parts of Bengal, it is difficult to say. It created a lot of panic and suspicion that Calcutta and Howrah were being left out. Why was there no food drive in Calcutta and Howrah where the big merchants had their godowns was a question the people asked everywhere.

23. But the argument on the other side is that these operations should be taken as a whole? — Yes. That was the argument advanced in the legislature, but it could not convince everybody. There was also another factor. The Government placed all their business with one single firm and it was bound to invite criticism.

24. You are referring to the *aus* procurement scheme? — Yes. I am not making any complaint against any particular firm. It might have acted in a bonafide manner. In any case if you give a monopoly to one firm, it is bound to create suspicion in the public mind and if such firm is inclined in that direction, there will be scope for all kinds of unfair dealings.

25. You think it was a mistake to have appointed one single agent? — It was a very great blunder. It not only created suspicion in the public mind but also gave rise to friction with other traders. The Government then failed to secure the good-will and cooperation of the trade that was necessary for the success of the scheme. Along with that another mistake which the Bengal Government committed was with regard to the import from outside the province. You will remember that after this ministry came into office, the Government of India declared a free trade zone, so far as eastern area was concerned. The Bengal Government tried to get stocks from Orissa and Assam but they did not get the cooperation of those Governments which they should have secured.

26. You think it was the fault of the Bengal Government's? — Yes, it was I think there should have been some more accommodation by the Governments of Assam and Orissa, but the main responsibility was with the Bengal Government. They should have approached the two provincial governments and secured their cooperation, because it was a great opportunity which the Government of India gave to Bengal at that time.

Another factor which I would place before you is the way in which they selected persons for the distribution of whatever stocks they were able to secure. Here again persons who had experience of business were overlooked and persons with political colour were brought in. I saw somewhere a phrase that in place of non-political traders the Government took in political non-traders.

27. You are referring to the distribution in the district? — Yes and in Calcutta specially.

28. You are talking of the free trade movement? — Well, it is continuing even today, this kind of giving licences to people who have had no past experience.

29. You are referring to rationing shops — Rationing shops and Government supply stores.

30. Government supply stores are run by Government? — Yes. That also I think is an unnecessary expenditure of public money and causes unnecessary delay and friction

[Omitted: Paragraphs 31–55, 36–55 Humayun Kabir's criticism in Ch. XVIII — Ed.]

Syed Jalaluddin Hashemi: I will finish in a few minutes. Apart from the big questions, apart

from the question of war inflation and denial policy and occupation of Burma by the enemy, I still hold that the policy adopted by the Government of Sir Nazim-ud-Din which I call the anti-hoard drive and food census is responsible for the deaths of poor people. You will believe me if I say that the people of Bengal, by culture cannot allow people to die before their very doors. So, we should see what was the cause of this disaster. I belong to Khulna. I started as many as forty relief centres in my district. The Government appointed one agent under the denial policy to purchase paddy from my sub-division and constituency. I protested. The policy adopted by the officer of that particular sub-division was wrong. He began taking bribes and resorted to corruption. I brought it to the notice of the Government that this policy would fail.

57. *Chairman:* What did he do at that time? — I will tell you later on. I forced the department concerned to enquire into my allegations and the department concerned recommended suspension of the officer. He was actually suspended and only the other day he has been reinstated by this Government. I still lay the charge that he took to bribery and corruption. I am a cultivator. I had paddy in my stock. I had no confidence in the Government and like myself many people had no confidence in the Government because they found from experience that the method adopted by the officer with regard to sugar and kerosene and salt was faulty. I am talking of just before the famine in the year 1943 when Nazimuddin Government assumed office. They first of all controlled sugar, then kerosene and then salt and then came the turn of rice. What did they do? I can even now prove to the satisfaction of the Commission that controlled price of sugar is 15 or 16 rupees a maund and in my area it sells at 55 rupees per maund and how? There are dealers and sub-dealers in the village. They come with a chit to the stockist. The stockist gives them some money, and in consideration thereof they sell the permit to the stockist who in turn sells sugar to confectioners at 55 rupees a maund. Take kerosene. The control price is rupees 5 or less than that. They take from Calcutta by country-boats to where dealers and sub-dealers are and who have been appointed by the Government. They distribute one kerosene tin among the villagers at the rate of half a pao per head and the surplus tins they sell at 20 rupees per tin even today. Enquiry can be made into this matter even today. There are so many instances of corruption.

58. This corruption is on behalf of the dealers and Government Officers? — I start from the beginning. I belonged to the Fazlul Huq party. I was Deputy Speaker of the Bengal Legislative Assembly of which I am still the Deputy Speaker. I requested the then Minister in charge the Nawab Bahadur of Dacca to stop corruption by Government officers first. There had been two conferences and I was the principal spokesman. Mr Pinnell was there. I pointed out certain officers of that particular department. I mean the newly started Civil Supplies Department and told them what they were doing. No attention was paid to my complaint. That very complaint was repeated in the Bengal Legislative Assembly by several members. We actually named those officers on the floor of the Houses. They were, we said, taking bribes to the tune of 5, 10 and 20 thousand rupees from the marwaris. No attention was paid to those complaints by the Ministry. The Ministry went out of office by the end of March 1943 and this Ministry came into office on 24th April. One sub-divisional officer of my sub-division was suspended.

I bring now the one single instance of the Jute Regulation Department of Bengal which is being conducted by some I.C.S. officer. He writes books often without knowing what he is writing about. His name is Mr Ishaque. The department consists of school boys, and college boys, they started with corruption and bribery. We protested and pointed out that these boys

were taking bribes from the cultivators, that the acreage is extended and they were doing many other things. And this department is now in control of relief and distribution. I made a complaint to my District Magistrate Mr H.M. Ali, I.C.S. I made several complaints to the existing sub-divisional office of my sub-division that every day they were changing the dealers, and that it had become a regular trades of the officers big and small. It is the case in every village. I have recently toured Khulna, 24 Parganas and the same conditions are prevailing everywhere.

With regard to the future, there will be no trouble if corruption and bribery were eradicated from the government departments. I met a very important old I.C.S. official of the Government of Bengal recently, and asked him why the I.C.S. officers were taking bribes. His reply was 'Hashemi, it is easy money, and comes without any responsibility'. Every man in the government service today is taking bribes without any sense of responsibility, from the top to the bottom, from the chaprasi to the highest officer. I make this statement without any fear of contradiction.

In my case I had to divide my paddy among several houses. They considered me anti-government, and I distributed my paddy to some of my relations to avoid keeping a quantity above the stipulated maximum. In that way people concealed the paddy. It is for this reason many people in my sub-division thought there was an abundance of aman crop.

Only the Statesman came to our rescue. If the Statesman did not give this account of the famine and did not publish the horrible pictures, I think no newspaper, English or Vernacular in Bengal, would have dared to publish these accounts. I sent reports of death in my village and that report was challenged by a petty sub-inspector of police. I said that three people were dying in my village and that report was contradicted.

59. How was it that these three people were not supported by the village people. — Actually, they came from other areas. Of course, some people gave them food, but ultimately they died. In a school in my own village I found three children dying without any medical aid.

Here in Calcutta the method that was adopted to drive out the destitute was simply barbarous. I said to the Relief Commissioner, carry them in a human way and not in a brutal way. It was not cared for. Women were taken in one lorry, men in another, and children in a third lorry, without any distinction as to wife, husband and child. The wife went this direction, the husband went that direction and the child to a third place. None knew where his wife or child was and it was exhibited to the world that there were no beggars in Calcutta. Even now you will find many beggars coming to Calcutta, but being driven away by the A.R.P. and other people. Dire necessity brings these beggars to Calcutta because now-a-days they are thinking that people in Calcutta would save their lives.

60. *Mr Ramamurty*: You have just said that officers from the very highest to the lowest were found to be corrupt in Bengal, if this is true, it is a very serious statement and position. Can you give me a statement of at least half a dozen high officers who are corrupt, quoting the instances when they accepted bribe, the amounts given and the names of those who gave the bribes. This information will be kept confidential. — Yes, I can give full particulars and names, provided you will give me an assurance that you will keep the source absolutely secret. (At this stage Mr Ramamurty consulted the Chairman and it was announced by the Chairman that Mr Hashemi's name would not be divulged, but that the information would be utilised to certify the allegations.)

61. We would not divulge the source of information. — I can give you the details of the amount of bribes taken, the names of the officers, and the parties even, provided my name

is not mentioned. I can give you a typed copy. I can hand it over to the Chairman of the Commission and my name will not be there. Only for my protection and nothing else. And the service that the Commission will render to Bengal is to suggest to the Government the ways and means of checking corruption among the officers. I am particularly emphasizing the Jute Regulation Staff of Bengal. I will send the list tomorrow in a sealed cover to the Chairman with a forwarding letter enclosing a typed copy of the details of names, etc.

Mr Shamsuddin Ahmed: I think two members of our party have stated most of the things before this Commission. I think you are inquiring into the causes of the Famine and to know the procedure by which future famines could be stopped. Well, Sir, as an ex-Minister of the Government of Bengal, speaking very frankly, I think the first and the root cause of the trouble is the irresponsible Government of India. And very unfortunately Bengal was saddled with a Governor who was not only pro-League but anti-Fazlul Huq Ministry. I believe that, in spite of the Ministry's several attempts to put the case of Bengal before the Government of India, it was not done by the Governor, and I believe if that had been done in the beginning of 1942 or the middle of 1942, the disaster that came to Bengal though it was precipitated by the unwise acts of the Nazimuddin Ministry as you call it, and I will come to that later on – the big toll of human lives in Bengal might have been obviated. I don't know what Mr Fazlul Huq and other Ministers have said; but so far as I remember in regard to the denial policy and the first rice purchase scheme, the then Governor, the late Sir John Herbert, never consulted the Cabinet; even though when we came to know we protested, he did not pay any heed and said that those things had got to be done.

62. *Chairman:* I suppose it was a military necessity? – But even then, the Ministry could have been consulted when there was a Ministry, otherwise the first course ought to have been the application of Section 93 and the doing away of provincial Autonomy. Even today the scheme of sowing jute, the agricultural policy that has been pursued in regard to jute, has been directed by the Central Government.

63. Will you stop sowing of jute absolutely? – When I cannot feed my people the first duty of Government would be to feed the people and that would have been done if there had been a National Government. Therefore, when the Government of India adopted the denial policy, they knew that large numbers of soldiers were coming to Bengal and that the whole civil life would be upset.

64. You said it was the duty of the Government to feed the people and you would grow no jute at all. I am asking whether you would agree to grow no cotton. – Yes, if necessary.

65. You have got to carry your rice in jute bags, you have got to grow some jute? – Some jute will be grown. I don't say that no jute should be grown; I think there must be restriction in such a manner that first of all in order to meet the situation you should be able to feed the people. It may be that the Burma rice that used to come in was very small but we used to get something; but in the face of very large influx of people into the province, it was upto to the Government to so adjust their agricultural policy as to be able to feed the people. There is also the question of cattle being killed or exported. Only the other day I found that in Northern and Central Bengal an ordinary bullock is being sold at Rs 150 against Rs 30 or 40 before. We do not know what is going to happen if this cattle situation continues; it will be very difficult to get cattle to carry on the agricultural operations. So in these abnormal times, abnormal remedies are necessary. I do not think you can meet the situation by getting wheat from the Punjab or the C.F. You must restrict the cultivation of jute and grow more paddy.

Mr Jalaluddin Hashemi: One more point and I will finish. Would this Commission kindly

enquire into the questions of how many bags of rice were left in different stations, Bongaong in the Central section to Daulatpur, and the Commission would kindly enquire into how much of foodgrains, having been found unfit for human consumption, were sold as fodder in the same way as it happened in the Botanical Gardens. This shows the inefficiency of the present Government to deal with these things. *Mr Humayun Kabir*: We have in our memorandum referred to the question of exports from Bengal. The Government of India have made statements from time to time which differ. In March 1943, in answer to a question in the Council a statement was made that no further exports would be made from Bengal. Later on, on the 25th July 1943 there was a further communique by the Government of India that beyond this date there will be no further exports. Now, if the exports had been stopped in February or March, there would have been no question of stopping further exports from this particular date. These are little things, but the Commission might try to reconcile these conflicting statements of the Government of India . . .

92: Evidence by Dr N. Sanyal, Whip of the Official Congress Party and Dr A.C. Ukil dt 1.9.1944 (extracts)

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[*Omitted*: Paras 1 to 41 but paras 35–48 have also been included in Chapter xviii because of their relevance to the theme of that Chapter. – Ed.]

42. Did that show official action? The Muslim League is a political party, the European Group is also a political party; and it does not follow that, because these political parties asked to withdraw support from the Fazlul Huq Ministry, there was official backing to it? – Well, there is more than evidence in other directions . . . In September 1942 an interesting thing happened. The European Group sponsored a motion in the Assembly suggesting full support to all measures of repression taken by some executive authorities in connection with certain political disturbances.

43. It was in September 1943 or 1942? – 1942, I mean.

44. Measures taken by Fazlul Huq's Government? – That was so. The Whip of that party proposed an amendment. The Deputy Speaker was conducting the proceedings in the absence of the Speaker. The Governor sent letters quite out of his way to the Deputy Speaker suggesting that he should finish the discussion on the European Party's motion although previously it was arranged that it should not continue beyond a certain date. I possess these letters from the Secretary to the Governor addressed to the Deputy Speaker.

45. Suggesting that the debate should be concluded? – Yes and that suggested that the Governor was taking an active interest in the European Groups' motion in the legislature.

46. Have you got the letters? – I thought it won't be necessary to produce them here. They were letters addressed to the Deputy Speaker. If you like I will get them tomorrow and show you.

47. Let us proceed to para 21 of your memorandum? – Regarding the Governor's attitude

I suppose you have heard Mr Fazlul Huq's evidence. He must have referred to the letters he wrote to the Governor which he read out in the Assembly. It is no secret and copies are now available. They are printed.

48. Who printed them? — Mr Fazlul Huq himself. They are also in the Assembly proceedings dated the 5th July 1943.

49. Now, in para 21 of your Memorandum, you suggested stoppage of exports — That has been our case right from the beginning. There should be no scope left for public suspicion in this respect. Not that the exports were large, but even a suspicion that there were exports would upset the market conditions.

50. It is difficult to prevent people from suspecting things. What would you have Government do? — Government could have made a categorical statement that there would be no exports from Calcutta. They made no such statement. There is a difference between the suggestion made by us in July 1943 as stated here regarding the Central Food Council and the previous suggestion for an Advisory Committee. Here I contemplated a sort of executive organisation. The previous one was for an advisory organisation. This was a stage where we thought a mere advisory organisation might not be helpful.

51. You wanted a dictator? — No. But a fully powerful executive.

52. You wanted the Central Food Council with dictatorial powers? We wanted full powers for the Council. We said the Provincial Government, so far as food was concerned, should entrust the administration to a technical authority as something which should be more competently done by them.

53. You wished them to hand over Food administration to this body? — Yes and I suggested the Chairman could be the Minister himself.

54. But the cabinet, under the constitution, is the deciding authority. What you proposed amounts to this: The cabinet should hand over their powers to the Food Council? — In fact this was our case. As I stated in the past and as we said later on the Food administration was left in the hands of the most incompetent and probably a dishonest member of the Cabinet.

55. When was this? — March 1943 and previously also. The Nawab of Dacca was in charge whom we considered incompetent. This was our feeling. Mr Pinnell was taken on as the first Director of Civil Supplies. It was convenient for him to have the Nawab of Dacca because Mr Pinnell and the Nawab were in other respects closely associated previous to that. As you might be very well aware, Mr Pinnell was the Nawab's Manager or Secretary in his personal estate affairs. It was therefore very convenient for him to get a Minister who he was absolutely certain, would sign any papers that he might bring before him.

56. But it was definitely a matter for the cabinet? — There were many matters which had never been brought to the Cabinet?

57. But surely the matter as to who the Minister in charge of Food should be was for the Cabinet to decide. Do you suggest that Mr Pinnell prevailed upon the Cabinet to get the Nawab of Dacca? — It may not be Mr Pinnell, but the Governor surely could.

58. You are only assuming so! — No. In spite of our repeated and definite statements demanding that the Food administration should be entrusted to a competent person, it was given to this Minister. The position was more serious than that. As you are trying to get into the bottom of the whole thing, I should also state clearly this. Mr Pinnell knew that the Nawab of Dacca was in the habit of collecting money in various ways including on the issue of permits for the movements of sugar. There was one case in which a certain quantity of sugar from a North Bengal sugar mill was, after the embargo, ordered to move out on the authority of an

alleged telegram from the Minister, sent in the name of the Nawab of Dacca to the District Magistrate Dinajpur. The particular sugar mill was, under the arrangement of the Director of Civil Supplies, to supply Jalpaiguri, Bogra and other districts. But when the District Magistrate got this telegram from the Nawab of Dacca this sugar was allowed to come to Calcutta. This was actually brought to head and the papers were placed before the police for investigation, the Nawab having denied the authority of that telegram. A senior and capable police officer was entrusted with the investigation and it was revealed that the Private Secretary of the Nawab of Dacca had signed that original telegram handed to the Telegraph Office.

59. Where did you get this information from? — Would you like to know. Then kindly enquire of the Bengal Government. I am taking the responsibility for the statement here but I shall not disclose my informant for obvious reasons. I take responsibility for this statement and you are at perfect liberty to prosecute me if any of these statements is found to be wrong.

60. We cannot prosecute you. You are not on oath. — I think under the Ordinance appointing the Commission you have got the powers to do so.

61. You are giving evidence in private? — If you want you can send for the Police officer concerned and take his evidence. He is here in Calcutta. So, that case was not allowed to be proceeded with. Mr Pinnell knew all about it and so did the Governor. Therefore there is no difficulty in presuming that whatever papers Mr Pinnell sent to the Nawab Sahib, they were signed blindfold and Mr Pinnell could get the Minister in charge to do anything that he desired. Therefore my idea was that the Central Food Council should have full executive authority.

62. I was only trying to get quite clear in my mind that the cabinet was going to follow the advice of the Food Council. — You know particularly as an old administrator of vast experience that when party Government has to be organised ministers have to be chosen on grounds other than merit and ministers are placed in charge of portfolios on considerations not always of merit. So, that was the whole difficulty.

63. That is the case in all party cabinets. Even in a Congress Cabinet? — Probably, yes. But Congress parties are organised on a different basis and such difficulties do not appear when the party is in absolute majority. In coalition Governments the trouble is that you have to depend on the cooperation of other sections and that co-operation will come at a heavy cost of efficiency and probably of honesty.

64. So you rather preferred a section 93 Government? — We found that in a serious situation of the nature of a National Calamity, parties could not possibly function. In fact I could mention one little instance. Early in April or to be exact on 13th March 1942 and on the following days the Governor sent for some of us and wanted our opinion on the possibility of some kind of national Government. Just then, as you know, there were the activities of the Japanese in Burma and so there was some anxiety. He therefore tried to have an all parties administration and we gave him our qualified support in that idea.

65. What is that qualified support? — We wanted an all-India approach to this question and not merely from the Bengal point of view.

66. Was an all-party Government possible in Bengal? — Unless all-India questions were settled, we could not do anything. That is what we suggested.

67. You took the line that an all-party Government was not possible unless the whole of the constitutional issue in India was settled. You placed Bengal's welfare second to the settlement of the all India question? — Not quite. We said it was impossible to do much because we were not competent to decide many major issues.

68. What attempts did you make to have a national Government? — No kind of power was given to us to secure food unless it was within all India approach. There can be no question of working together on certain affairs which were definitely not allowed to the Ministers in the provinces under the constitution.

69. Your line of argument was that there was no possibility of an all-party Government in Bengal unless the major problem of India's constitution could be settled? — That is partly correct.

[Omitted: 70 to 106 — Ed.]

107. *Chairman*: I do not think the position you have taken up is tenable; those provinces, in view of their own difficulties, felt that they could not give; and the obvious alternative was procurement from your own resources. That is to say, you have resources less than normal: — I am not saying that we did not want to have our own procurement within the province itself. I am in favour even now for the current year, although there has been difference of opinion, that even in deficit district Government procurement plan must operate . . .

108. And particularly more so in the surplus areas of your own province. And what is the method of procurement you would have employed? — That also we have stated in our memorandum; in fact, while criticizing the Government of Bengal's policy of procurement we have made our own constructive suggestions always . . . What was the scheme you favoured . . .

109. *Mr Ramamurty*: For procurement from your domestic resources? — This is stated in my memorandum and observations in the press from time to time. It is also mentioned in my speech in the Assembly. My idea is that we should have Government-supervised local buying agents for procurement in every district selected from persons normally doing trade at the place requiring them to have regular statements made and given to Government of the actual purchases from week to week, where it is stored and kept properly. The whole work to be by local traders acting under Government supervision.

110. *Chairman*: You will employ trade agents under Government supervision? — Local trade agents.

111. *Mr Ramamurty*: One man in each district? — The number must be depending upon the availability of Government officials. If they have enough local officers to supervise they may have more than one man. My grouse has been that although I have helped Mr Suhrawardy in sponsoring his scheme of procurement, contrary to the wishes of Dr Shyama Prasad Mookherji who thought no procurement should be attempted, he would not take my advice fully. I told him you have got to depend upon the local trade. Instead of taking Ispahani, or Roy or Daulatram or anybody like that whose mere presence in the local area would create a flutter in public confidence and who also would have to utilise some local agents as their collecting sub-agents and who also would have to take the guidance and help of the civil supply officers there, why not employ some men in the trade locally?

112. Supposing that man is unable to buy all the quantity you wanted? — I said Government would make the offer and must be in a position to buy all that come to the market.

113. Supposing even with the Government offer, people did not sell? Would you requisition? — I would not at this stage. I am sure if economic condition made favourable there is no point in supposing that they would not sell.

114. *Chairman*: Economic conditions, meaning surplus of supply? — Yes and offer of fair prices. Surplus may not apply to the whole district. Surpluses with individuals may happen

when the district is not surplus. Government would know the men with the surplus. The local officials can contact the individuals and offer them and say, 'we are going to have a stepping down of prices and unless you part with the surplus now you will lose'. Requisition must be the last stage.

115. *Mr Ramamurty*: If he does not give you at the price at the time you want it you would requisition? — I am more or less a socialist in that respect. I won't mind the Government going the whole extent if my neighbours are starving. I won't care for private property at that stage. But I won't use that weapon first.

116. If necessary you would use it? — Certainly, in the interest of the community.

117. The condition in the market may be difficult if you requisition from the trader, but if you requisition from the producer it will be a different matter? — But there is the danger of less growing of food in that case. I would not requisition from the small cultivator.

118. That will be only in the next year? — But there also one has to move with caution. As a matter of fact in 1943 somehow or other the feeling was created throughout Bengal that Government was going to requisition any additional production and the agriculturists got frightened. You know how such panic get round. Production has risen, but a feeling like that had reacted on more extensive production although the economic forces were all inducing larger production.

119. *Sir M. Nanavati*: You mean production stopped? — They did not like to incur expenditure on cultivation as larger production might mean forcible requisition by Government.

120. But Government were prepared to pay the proper price? — Proper price was a matter which they were not sure of. That was the feeling. I do not say it was a fair feeling, but that has been the feeling among a section of the cultivators. Probably some reasons were that other consumable goods are not controlled and the cultivator could argue — cloth or kerosene oil prices are not controlled and supplied by Government, there is no reason why they should control grain price.

121. *Chairman*: As I said, procurement in a surplus market is very simple? — Not necessarily.

122. You may have to procure under war conditions; you have got to go to market in the surplus districts and you have got to provide for the deficit districts with stocks from the surplus district. When you have a surplus procurement is easy. It becomes difficult when you have a shortage? — Surpluses with individuals may remain when there is no surplus with his neighbours. The individual may be induced to part with his surplus although the areas might be a deficit one.

123. How will you do it? — The first thing is to give him the option and say 'here is my price and here is my policy' and let him choose.

124. You won't go too far? — No. Not too far. And then fix the minimum prices for the agriculturists also. That was another suggestion of mine . . .

[Omitted: 125-56 — Ed.]

157. *Sir M. Nanavati*: There is one question I would like to ask of you. Who said that the Huq Ministry should go out the European bloc or the Services? — The European bloc and the Governor — not the Services. The Governor on the advice of the permanent officials who were handling the food situation, was interfering, but that was a different question. It was the European bloc and the Governor together with the Muslim League who wanted that the Huq Ministry should go.

158. *Chairman*: Did this Government ever ask you to cooperate with them in relief measures

for the mitigation of the famine and was it a fact that you did not want to cooperate? – Well, they have asked us to few conferences when they decided upon their policies, completed schemes and had everything ready, and on one or two occasions just to have an eye-wash sent letters to our leader or to myself asking us to come and have a conference; but when we made our suggestions, we found that, before that, they practically had issued instructions to the districts. That is the position.

159. But our information is that you did not want to cooperate? – 'That is absolute humbug. So far as co-operation from us in the Congress Party was concerned, they could never have complained; on the contrary, we said that we were eager and anxious to cooperate in this great National Calamity, but they always tried to avoid us, and they independently framed their policy. This is true of the 17th November 1943 conference also.

160. This is true of both the Governments – the Huq Government and the present Government; the charge against both? – So far as both the Governments were concerned, they were trying to move on party lines, but individual ministers in the previous government sought our advice more often than individual ministers in the present Government.

161. The Congress Party was represented in the Fazlul Huq Government – No, there was no Congress Party, it was the Forward Bloc, Mr Sarat Bose's Party – who broke away from the Congress in 1941.

1. Refers to Provinces of Bihar and Assam, who according to the witnesses examined, did not help. – Ed

93: Evidence by Mr Somnath Lahiri, Mr Bhowani Sen and Mr Bhupesh Gupta of Communist Party – dt 2.9.1944 (extracts)

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Mr Ramamurthy: Lack of regulation in purchases by the bigger industrial concerns, led them to make unduly large purchases and that had this effect? Yes. *Mr Lahiri:* I may add that it gave an opportunity to the employers to purchase large quantities of grain, and they themselves became black marketeers. There was no check and generally people believed that they did use part of the grain bought for the purpose of selling to their employees in the black market. *Mr Gupta:* I may add that the industrial concerns used to purchase more than their requirements. For instance, the Lily Biscuit Co. (managed by the Bengalis, Mr Seth & Co. perhaps are the proprietors), used to draw rations for larger than the number of workers in their firm required. This was an open secret.

33. Who were supplying them? – The Bengal National Chamber of Commerce were also distributing food. The surplus they used to put on the black market.

34. *Chairman:* Don't you think it was an exception rather than the rule? – It was suspected that many of these big industrialists were doing the same thing. There was a terrible suspicion that the E.I.R. also was doing the same thing. It was practically buying from different sources, and building up stocks.

35. Building up stocks for feeding its employees? — But it was buying far beyond its needs. It was rumoured in business circles that they were misusing them.

36. You cannot listen to all rumours? — *Mr Sen*: The point is that the matter was never investigated.

37. *Mr Ramamurty*: Were there different chambers of commerce?

Chairman: The National Chamber of Commerce has one scheme. The Indian Chamber of Commerce has its own scheme and the Muslim Chamber of Commerce has its own scheme. *Mr Gupta*: But I think all these chambers combined and there was coordination for this purpose. They pooled together and worked out as one scheme.

38. *Mr Ramamurty*: For how long did they work together? — I cannot tell you the exact period. But I think they worked for some months and it continued up to the beginning of rationing in Calcutta.

39. You refer to some prominent business and banking institutions. What had the banking institutions to do? — This matter cannot be proved but we had strong reasons to believe that institutions like the Nath Bank and bankers like Hemen Datta were concerned in it.

40. What did they do? — The suspicions that these bankers invested for the purpose of procuring stocks of rice which they sold at higher rates. *Mr Gupta*: He is the owner of Mahalaksmi Cotton Mills. *Mr Sen*: The matter was not investigated properly. They have branches in most of the rice producing districts of Bengal especially in the Eastern Bengal districts. They instructed local agents to buy stocks by investing bank money and the bank money was used for speculative purchases. Since it requires large amount of money to buy huge quantities of rice, it was not possible for individuals to advance money but the bank money was used.

41. *Mr Ramamurty*: You say that all these are rumours? — *Mr Sen*: They are not rumours. We have strong ground to say that These matters were not formally investigated. Our idea is that it is true. If any officer was able to accompany us, we could show the stocks and we could show how they were being disposed of. But I cannot produce any document.

42. *Chairman*: Were stocks lying in Calcutta then? — Yes, they were there at the time when anti-hoarding drive was launched and when embargo was imposed on districts.

43. But there was tremendous difficulty of transport in June. — In spite of this honest traders could not get transport facilities but dishonest traders could get those facilities. At that time transport crisis was not so serious as it was this year.

44. It was very serious in 1943. The Bengal Government had difficulty in getting stocks out in August and September. Transport difficulty was certainly very great in June 1943. — Take for example districts near about Calcutta.

45. We are told that the denial policy reduced large number of boats. — That was in coastal areas.

46. People are blowing hot and cold and say that the denial policy with regard to boats had adversely affected the transport system, while, on the other hand, you assure me that people were able to obtain boats easily in June 1943. — *Mr Gupta*: What we are saying is this. Certain rich people in those areas could lay their hands on sufficient number of boats. It does not mean that people who had been deprived of their boats had plenty of boats going. *Mr Sen*: In spite of tremendous difficulties of transport in East Bengal, the District Magistrate of Barisal had to admit that large stocks had been taken out by hoarders. They were able to get steamers, wagons etc., etc., I say that in spite of transport difficulties, whatever transport was available, was made use of by the hoarders by means of bribery etc.

[Omitted: 47-69] [54 to 60 may be seen in Chapter V, Doc. 139 — Ed.]

70. *K.B. Afzal Husain* — You estimate here that through the Provincial Kisan Sabha, one lakh acres of land were added to the cultivated area. How did you estimate these figures? — That was done by Kisan Sabha workers, who themselves did the work. They had surveyed the area.

71. What is the strength of the Kisan Sabha? — The Bengal Kisan Sabha has a membership of 2 lakhs in Bengal alone and in different districts, they have thousands and more than that.

72. Are these people competent to measure land? — Oh; Yes. There are also intellectual workers as leaders and organisers.

73. Agricultural statistics of Bengal are absolutely unreliable and you say that a huge staff is required to bring them to a standard where reliance could be placed on them. Do you think the estimate of the Kisan Sabha is more accurate than Bengal Government's? — Oh! yes. Organisations like Kisan Sabha give better and more reliable statistics than the Government can do. Now suppose a certain area is taken up by a union and it is cultivated. They immediately send the report that we have cultivated such and such an area, this is its total length and breadth and this is the total production. Then in the course of the year all such reports are coming in. They are added up and a final report is made.

74. Do you check them? — There are district committees everywhere. The reports have to come through the districts committees and if there is any suspicion, they are asked to check up.

75. This requires a great deal of labour and great expenditure of time and energy — Yes. But this is their work, growing more food. This is one of the most important works in their village areas.

76. Through these efforts, do you think you have substantially added to the food resources of Bengal? — Not substantially but something. But given better resources and more opportunities, we could have done much more.

77. These one lakh acres would give you 15 lakhs maunds of paddy — Yes. In that sense it is so. Taking the need of Bengal as a whole it is not much. The job is not so much difficult as you think, because what happens is this. If a particular canal, one mile long, is properly excavated or proper bunds are constructed, that saves at least 100 or 500 bighas of land, i.e. in terms of acres, 100 acres or something like that. The huge waste land remains uncultivated. That has to be taken up for developing production. Government can grow much more food by means of digging canals or erecting bunds over canals, by helping the peasants to remove saline water from certain areas and if it is done in an organised manner and the money sanctioned for the purpose actually goes for this job. *Mr Sen*: If the digging of a canal or the erection of a bund over canals, helping the peasants in the task to remove saline water in certain areas, if these are done in an organised manner, it would be helpful and much more food can be grown than is grown now.

78. Government also works in the same manner as far as agriculture is concerned — *Mr Lahiri*: The difference is that the Government does it from the top, we do it from the bottom. In a particular area the land is lying fallow. The people ask us to make a petition for some allowance and they draw the scheme and in this way they improve their own area.

79. You suggest that the Agricultural Department should function in cooperation with popular organisations like the Kisan Sabha? — *Mr Sen*. Yes. Our party and the Kisan Sabha have been running a campaign among the peasants for growing more food. There was a movement started in December 1942 which still exists for the grow more food campaign.

Volunteers have been engaged and they are doing a patriotic work. Sanghas have been formed and they dig the canals, construct the bunds and do other things. They hold meetings in the different areas.

80. *Chairman*: Your view is that everybody in Government service is inefficient, useless and dishonest — *Mr Sen*: No, we do not say that, there are efficient officers in Government also, but the whole administrative machinery is such that there is no cooperation between the people and the Government. We draw the most honest people who are inspired by the love of the country in our work and campaign, while the government officials offer money to some people and they are attracted by that money only.

81. It is rather wholesale condemnation of your fellowmen — *Mr Lahiri*: No, you are making a mistake there. It is a wholesale condemnation, not of the people, but of the policy of the government. It is also a condemnation of the people who are associated with that policy.

82. Do you mean to say that the present Minister of Agriculture does not desire to assist — *Mr Lahiri*: The psychology of the masses is a complex one. There is no voluntary cooperation unless a thing is done in a proper way and with an understanding with the people.

83. *K.B. Afzal Hussain*: Some people say that the Grow More Food campaign is only on paper and that nothing has been achieved. — On the other hand, according to your showing such a great deal has been achieved. *Mr Lahiri*: We have given figures to show it.

84. So, if this campaign goes on you think that Bengal will become self-sufficient as regard food? — Yes, but in the way in which the campaign is being conducted by us. With a serious effort and cooperation between the people and the government much results can be achieved.

85. Are you satisfied with the working of the local bodies like the Union Boards, the District Boards in relation to the Grow More Food campaign and generally the administration of the area relating to health, social work, etc.? — *Mr Lahiri*: In most cases, these local bodies cannot do much for the simple reason that they have very little funds.

86. *Chairman*: But you are doing much work with less funds — Yes, but still the feeling of the masses is that the supreme head of these organisations is the Government. Therefore these bodies cannot do what we can.

87. The District Board Chairman is a non-official — *Mr Sen*: Every one looks at the problem in this way that whoever is connected with the administration is connected with the foreign rule. So, there is naturally a mistrust for any official organisation. The Food Committees which were established during 1943 were successful mainly because of the propaganda carried out by the Communist Party of India among the villages. Even if the Government is at the head of the administration. We have organised these bodies by carrying a campaign with the people saying that they must use those organisations in the interest of the people for the purpose of distribution of food among them, so there is a change of attitude on the part of the people towards the Food Committee.

88. *K.B. Afzal Hussain*: Which is the locality in Bengal where your organisation has done the best work? — *Mr Sen*: In many districts, for example, Chittagong, Noakhali, Dacca, Mymensingh. In food distribution and relief work Grow More Food campaign, etc. we have done excellent work in majority of Bengal's districts.

89. Can you not be more specific with regard to the particular areas? — *Mr Sen*: For example every sub-division in the Chittagong district you will find our work, also in Susung and Kishoreganj in Mymensingh.

90. *Sir M. Nanavati*: If requisitioning of food has to be resorted to, do you think it is possible to get it in the countryside? — Yes, on condition that there is cooperation between

representative bodies of people and the Government. For example there should be complete cooperation between Food Committees and Government Officers. And provided also that there is a real surplus in the hands of the cultivator. There will of course be opposition on the part of the holder of stocks, but in that case the Food Committee by means of propaganda amongst the peasants and other people might persuade them to give out their stocks. Actually it was done during 1943 in the month of June when there was a food drive by the new Ministry, and they were able to unearth some hoarded grains.

91. *Chairman:* But you said that the food drive was not successful? — That is over a large part of Bengal. In the majority of cases Food Committees representative of the people were not set up as was done in 1944.

92. *Sir M. Nanavati:* You have stated on page 9 that in certain places where the people and the officials cooperated, very good results were achieved. What are those places? Madaripur Sub-Division in Faridpur, in North Bakarganj, Susung in the district of Mymensingh and many other places.

93. How did you know which people had stocks? — The local food committees which had on them representatives of the Communist Party and the Kisan Sabha, themselves knew who were the people — the Jotedars, the big landlords and very rich peasants — not actually peasants, but very rich people — these people had their stocks and the officials through the local committees unearthed these stocks. It was done without much opposition, for previous to that our organisation held mass meetings as soon as we came to know that there was going to be a food-drive, and explained to the whole people that to keep stocks more than was necessary for one's own needs was a crime amounting to murdering their own people; that anybody who had stocks should produce it, and that if such stocks were not produced it was the duty of other people to forcibly take them away from them. As a result of this propaganda, the people themselves realized that requisitioning was necessary in their own interest, and that produced the stocks. In those areas where we are weak, we are not able to hold mass meetings we cannot do any useful work. Of course the police do not allow us to hold mass meetings because of the ban in Bengal against public meetings. . . .

94: Evidence of L.G.P. Pinnell dt 4.9.1944 (extracts)

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[NAI]

Present: All Members of the Commission

Mr L.G. Pinnell, Special Officer, Civil Supplies Department, Bengal.

. . . 7. *Chairman:* What we want is if you could give us a detailed account, an objective account of this period, from the 1st of January to about the middle of March, with reference to buying by commercial firms (not only the Bengal Chamber of Commerce, but other large commercial firms outside) commercial and industrial concerns, Railways and Port Trusts — Railway is rather difficult.

8. *Mr Ramamurty*: But you might try to collect. Not only up to March but we really want up to August. Why was there that steep rise of prices from January to August.

Chairman: We were looking at that table. Apart from that there was a gradual rise in prices upto May? — There was a gradual rise upto the middle of March and there was a sharp rise at the end of March. There was a drop in Calcutta as soon as we got Orissa imports.

9. In March there was a drop from 22 to 18? — I can give you a copy of those graphs. It kept fairly well in Calcutta for some time and then it shot up in May

10. That was just before the free trade period? — Yes. In the Mufassil the rise was much more steep in March. We were able to hold Calcutta still with the help of imports.

11. Then there is the question of speculative buying and hoarding. It is not quite clear as to where they were hoarded. Have you got any information as regards stocks in Calcutta going up, any enquiries made as regards stocks? By that period we had the Food Grains Order brought fairly well into force. The Bengal Chamber certainly were beginning to tighten up on their member firms and we made it clear to them that they came under that order.

12. *Mr Ramamurty*: Hoarding was not necessarily in Calcutta but outside also? — As regards Calcutta I have heard a lot. People used to talk in clubs about hoarding and somebody in the Supply Department was talking about somebody who had told him of large hoards. I said to one or two of those people myself, that I was not interested in finding 500 maunds, but if I could lay my hands on anything as big as a hoard of 10,000 maunds that might come out as a result of these people telling me about it, four annas a maund would be paid as a reward. That came to at least Rs 2,500 for the informers.

13. *Chairman*: Was it publicly announced? — No, Sir.

14. *Mr Ramamurty*: People were expecting to make much more than four annas a maund as profit — Yes, Sir, but Rs 2500 is not bad for a common informer.

15. The Bengal Chamber of Commerce have given the monthly average in case of rice. They say it was 218 in February, 496 in March 634 in April, 780 in May 951 in June and 1031 in August.

Chairman: This is not the Bengal Chamber of Commerce, it is the National Chamber of Commerce. In Calcutta the prices in January ran from 10 to 14 (some discussion followed as to the correctness of the index figures quoted). The best evidence we can have is the price that McInnes was paying in March as also in April.

16. Is there nothing definite to show that stocks were not large. — Only this that the Foodgrains Control Order was enforced in Calcutta on dealers.*

Mr Ramamurty: Our impression has been that the Foodgrains Control Order was nowhere. You had not the machinery to enforce it.

17. *Sir M. Nanavati*: One of the witnesses said that a police officer was asked to administer it and he had not yet read the order.

18. *Chairman*: What we want to know is, how far the Foodgrains Control Order was administered. — By March the Bengal Chamber of Commerce had got pretty accurate information from its member firms. I am not sure if we ever got proper information about stocks kept by Commercial firms, for example Banks as distinct from Industrialists.

* As a result of subsequent check in the light of paper now found, I wish to correct my memory on this point. The Foodgrains Control Order was not working well in Calcutta. The Order which was working fairly well, and which gave us the stock figures, was an order under the Defence of India Rules passed as a Civil Defence measures to get fortnightly returns of stock. It was applied in practice to all known dealers and large traders and the Bengal Chamber Group, Government Departments and known priority consumers. I had forgotten about this order and regret the mistake in stating that it was the Foodgrains Control Order which was working well.

19. *Mr Ramamurty*: The Bengal Chamber of Commerce has stated before the Braund Committee that the total profit made in rice was 160 million pounds sterling and the price at which rice was sold was sometimes a thousand per cent over the purchase price. — As regards the existence of large hoards, I can say that every endeavour was made to find them out by offering large rewards and by getting the police to see if their people could help in the matter.

20. *Chairman*: Did you make personal inspection — Not in connection with anti-hoarding but I did myself visit the Calcutta Rice Mills in March. Their stocks were very negligible.

21. *Mr Ramamurty*: Did you examine any stocks kept by the speculators outside Calcutta. — If there had been any, the district officers would have known of them.

22. We have received evidence from various witnesses to the effect that stocks were kept there. — I think there was hoarding by big Taluqdars in Jalpaiguri but places like Narayanganje were certainly empty.

23. *Chairman*: Have you got information on that point? — I went to Dacca myself. The same thing applied to Chandpur. Mr Llewellyn, then District Magistrate of Dacca — a very keen rice hunter — might be asked about it. If the stocks were being held, then the only thing I can see is that they were being held with the cultivator. The only thing I can think of is that the people who bought it must have left it with the cultivators and not collected it together.

24. Will it be any use asking people who were district officers say of Burdwan or other districts in North Bengal. — Mr Rajan will tell you a good deal about Hili. My own belief is that there was speculation and one could not help making money. We could not have helped making money ourselves . . .

95. Evidence by Mr D.P. Khaitan, Mr G.L. Mehta and Mr R.L. Nopany dt 4.9.1944 (extracts)

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[NAI]

Mr G.L. Mehta: May I say a word about the reasons for the rise in prices, Sir. I believe that the purchase policy, the procurement policy, at that time also sometimes sent up prices. For example, the Government announced a certain price at one time, and the next week the price was put up by Rs 8 or so because they were not able to get the stock.

49. When was this? — This was in May-June.

50. Not early? — No, not early.

51. You think that by May prices had risen? — Yes.

52. *Mr Ramamurty*: I am concerned with the beginning of 1943 up to August when there was a steep rise in prices. — *Mr Nopani*: In the beginning of January and February the price was something like Rs 13; then it went up and then it came down in the month of April, and then from May onwards the price went up.

53. In December 1942 the price was Rs 12 or so; then from December it rose? — Yes. But the highest rise had not been before May.

54. Why it was bad enough by March and in May? — Yes.

55. *Chairman*: What about procurement by Chief Agents? — Have you got any views on

the question of procurement, this year particularly? — This year the policy of the Government has been that they do not want to buy by adopting force; they want to buy whatever could be obtained voluntarily, and this method has met with a good success. But last year the prices had not been the main factor; the quantity was the main factor. And this year the prices are the main factor. The prices are fixed. We are asked not to buy above a certain price, irrespective of whether the Chief Agents can get the stuff or not.

56. Was it not the position last year? — It was not so last year.

57. What was it last year? — I was not concerned with the purchases in the last year. But from whatever information has come to us, the prices had been rising, and if anybody wanted to sell more and more quantities, he would have been able to get better prices. But this year, whoever wants to sell even in very large quantities, no prices could be realized. And, moreover, there is the Advisory Board this year which fixes the prices. The maximum is fixed by that Board. No Chief Agent can buy at anything higher than what is fixed by the Advisory Board and he tried even to buy at a lower rate.

58. *Mr Ramamurty*: Do you make your purchases mainly from the millers, the traders and the producers? — All the mills have to deliver their goods to the Government — to the Chief Agent.

59. Then next from whom you buy? — The mill rice is excluded therefrom, of course. And then the paddy and hand-pounded rice we buy from the trade in the district wherever the trade is functioning.

60. As far as possible you try to buy from local traders? Yes.

61. You do not go to the producers and buy? — No. An understanding subsists by which the local trade channels will be maintained and purchases will be made through the local trade channels and we have been buying all the stuff in this manner.

[Omitted: 62-160 — Ed.]

161. *Sir M. Nanavati*: You say something about storage last year. You mean to say that if the trade had been consulted or asked for help, the destructions of so much valuable foodgrains would have been avoided. — Storing difficulties are being experienced all over India even now. We are also finding it extremely difficult to store and if next year Government wants to buy stocks, they should make proper arrangements for storage. Similarly here also, as in the Botanic Garden, and other places foodgrains were stored without putting sheds even.

Mr Khaitan: If I may intervene, it is our definite opinion that if the Government had cooperated with the trade in Calcutta to a larger extent and in a better manner, all these foodstuffs, which had to be destroyed, would not have been destroyed.

162. You mean to say you would have found space for the storage of 90,000 tons — Yes. It would have been more widespread. It would have been stored in a much better manner and greater care would have been taken.

163. It was not only here, but in other places that a portion of stocks was destroyed by bad storage — Yes.

164. What do you conclude from that? — That there is no possibility of destruction. Nobody would like or allow such precious material to deteriorate merely for the lack of storage capacity. That shows inexperience. Talking of India as a whole, the quantity of foodstuffs that had been stored this or last year used to be stored in the country without any loss. When I say any loss or wastage, I mean the loss or wastage used to be negligible which nobody could notice, and apart from the destruction of the foodstuffs that has taken place, you should take notice of

the amount of damaged foods that have found their way into the stomachs of the people making them ill and diseased.

165. That is another point. What I ask is whether there was storage especially available and if the trade was consulted whether this destruction could have been avoided — There is no doubt that if the trade had been consulted with regard to storage difficulties, there would have been little destruction, and if for the time being there was no storage capacity in Calcutta, advice could have been given to store the goods elsewhere, as used to be done in previous years. The trade is the best section of the people that could advise on these points.

166. And the trade was never consulted — In fact, from the very beginning we have been advising the Bengal Government that they should have a small committee associated with the Government and we suggested that one representative each of the five Chambers of Commerce should be asked to constitute an advisory committee. If other suitable persons could be found, that was a different matter, but the five Chambers of Commerce should send one representative on that committee, but that committee has never been constituted, and although the workers never saw or knew what Peshawar rice was before, and although they did not know how to cook that rice, they have been given that rice; whereas that section of the population which needs that rice are not given that rice, although they are prepared to pay any price for that kind of rice. That kind of rice never sold in Calcutta below Rs 26 and used to sell at Rs 10 a maund, and the people who want that rice who know how to cook that rice and can appreciate that rice, cannot get although they are prepared to pay Rs 40.

167. Possibly due to the rush in the shops? — If it is due to the rush, Sir Manilal, after so many months, would you attribute it to efficiency and proper management? Surely the trade can adjust itself within a week? I may give you another instance. There was an arrangement made with the Sugar Controller for the distribution of sugar in Calcutta. The Indian Sugar Mills Association undertook to make proper distribution of the sugar. Arrangement was tentatively made; even with the Government of Bengal; an agreement was drafted and was going to be signed, when at the last moment it was stopped.

168. By whom? — By the Government.

169. Why should they interfere in that? It was the Association's own business? — You please ask Government why it was stopped. The Association would have done it without any profit; perhaps they would have incurred a loss and certain members were prepared to contribute towards the loss. The officers of the Government could not trust the whole trade. *Mr Nopany*: I just supplement what Mr Khaitan has said? At that 1,700 bags of sugar were being distributed to Government control shops; and people were given a pound per week per man. 1,700 bags per day comes to nearly 3 lakhs of pounds. You can easily imagine the Government shops had been open for an hour or so in a day and 3 lakhs of persons being served by the Government shops, whether it was a possibility or not. People had been crying for sugar and they could not get any sugar. Then the Sugar Mills Association approached the Government. The Sugar Controller was agreeable to our suggestion, and he agreed in writing that this sugar will be distributed through the Sugar Mills Association who will open their own shops in every place all over Calcutta to see that it is distributed properly.

170. And now the Government have included it in the rationing scheme? — I am speaking before that. *Mr Khaitan*: But we suggested Mr Chairman that everybody does want a quantity of sugar that is given in the ration. Therefore, there should be separate shops for sugar, so that the persons who needed the sugar would go and buy that sugar. Now, what happens, is that everybody is entitled to the rationed quantity of sugar and you can understand the effect

of that; one can draw sugar and then sell it at a higher rate if he does not need it himself. Instead of such a thing happening, the suggestion of the Sugar Mills Association was much better namely that one month's consumption or a week's consumption could be given on the ration cards issued by the Government by the separate shops, so that only those persons who consume sugar would go and get the sugar, but not in the same shop with ordinary ration cards at the same time.

171. When was this Advisory Committee appointed of which you are a member? — The Rice Purchasing Committee? It was constituted at the beginning of this year.

172. *Chairman:* That is when the Aman Procurement Scheme was decided upon. — *Mr Mehta:* May I say in this connection one thing more? These Chambers of Commerce have been pressing for the establishment of a Food Advisory Council and when Sir Thomas Rutherford came over here as Governor and saw the Presidents of the four Indian Chambers of Commerce and discussed the matter, he was rather surprised that there was no such machinery in existence in this place; he said even a province like Bihar had a Food Advisory Council; but although this suggestion was approved by him and by officials like Mr Kirby and others, Government declined to set up such a machinery and the main argument was that it would introduce so much of politics in this province that it would be unworkable. Now, Sir, the position is that politics in the sense used by them is not only on one side, because to support Government is not considered as politics but only to criticise Government is considered as politics by them. I can truthfully say that the suggestions and criticisms which we have made have been made irrespective of the form of the Ministry whether it was the Nazimuddin Ministry, or the Fazul Huq Ministry, or that of Shyama Prasad Mookerjee or anybody else; they were suggestions we would have made in any case as a Chamber of Commerce. Then again, take the question of distribution. In Bombay — these are the only figures I have got — there were 650 private shops, 150 Government shops and 100 cooperative stores and communal stores. We suggested that similarly in Calcutta private trade should be utilized to the fullest extent under proper Government control and supervision. But this suggestion was not accepted and the Government of India had to issue a directive under which they laid down that 55 per cent of the shops should be private and 45 per cent should be Government shops. Nevertheless the Provincial Government decided that there should be 400 Government shops and 450 private shops; but in order to undermine the direction of the Government of India, each private shop was to cater for 1,500 persons, but each Government was to cater for 3,000 persons and subsequently, for unlimited members. After all, this is an emergency condition, and when normal times return, it is not expected that the Government shops will continue; and there will be a return to normal trade channels. Despite our request, the Government declined to agree to recognise any new cooperative societies.

173. *Sir Manilal Nanavati:* Political or communal? — It is easy to know what. In any case my point is this; if these questions had been judged impartially in collaboration with trade, many of the difficulties could have been obviated or mitigated.

175. Just one question. This Committee was formed in January, the Advisory Committee that you are speaking of. You knew just about that time that a lot of foodgrains were being dumped in the Botanical Gardens. Could not your Committee have undertaken to rectify the mistake? — *Mr Khaitan:* Excuse me, Sir Manilal. I have always insisted on the Government that this Committee should have a separate Rationing Committee constituted for Calcutta, the Rice Purchasing Board, should have the power to advise the Government not only in the matter of procurement but also of distribution, and the Government always said that this

committee will deal only with procurement and not with distribution. So far as the area is concerned, the Calcutta area is absolutely excluded from the jurisdiction of the Rice Purchasing Board. It has nothing to do and it is for the purpose of storage and distribution.

So far as Calcutta is concerned, I am talking of the Botanical Gardens, it was absolutely excluded from the jurisdiction of the Rice Purchasing Board. It is only for the purposes of storage and distribution, for the purpose of giving to the consumers a variety of foodgrains they need, we think it is necessary that a committee of the kind we have suggested should be set up. A non-political body, the Chambers of Commerce are not political bodies, that would be the best people to advise Government in regard to all the points of view.

176. *Sir Manilal Nanavati*: The Botanical Gardens depot was not entirely for Calcutta alone?

177. *Chairman*: I think the explanation is that the Advisory Board was created under the aman procurement scheme and therefore had nothing to do with foodgrains received in July, August and September. — *Mr Nopany*: Even where foodgrains are obtained from other provinces we have nothing to do.

178. The Procurement Board's main function is to fix prices and supervise the Chief Agents? — *Mr Khaitan*: We do not supervise the Chief Agents at all. All that we do is, figures are placed before us as regards the quantity purchased and we receive reports about the rates prevailing in different districts. We consider what the future prices should be and from what date the new prices should become operative. Once or twice matters come to us about transport difficulties. Mr Stevens put himself touch with the Maj. General Wakely and the problems are discussed.

179. *Sir Manilal Nanavati*: Transport difficulties regarding stocks purchased? — Transport difficulties within a district or between districts and to private merchants.

180. The Advisory Committee has got very limited functions? — Yes. We wanted to discuss a large number of problems regarding rationing in Calcutta and about the future. So far as the future is concerned we think Bengal is a very deficit province and unless immediate steps are taken for the purpose of increasing the main foodgrains there will be great difficulty again. Even now there are large numbers of deaths taking place as a result of malnutrition and serious attention should be paid to the nutritional aspect of the whole problem. Then there is the question of fisheries and other things. But from reports from newspapers I do not think sufficient attention has been paid to the nutritional aspect.

181. *Chairman*: We had a long talk with Dr Ukil — If that is so it is all right.

182. *Dr Aykroyd*: The Commissioners will give due attention to this aspect of the problem. — *Mr Mehta*: I do not know if any members of the relief committees have appeared before you. I must say something in this connection. I have myself been connected with four relief committees including the Governor's Relief Committee on which Mr Khaitan, myself and Mr Sarkar were members. The Bengal Relief Committee is another organisation and there is also a special relief committee constituted for the provision of relief through work and not merely gratuitous relief. We have got Dr Ukil on it and the committee has very good social workers. The plan we have followed is explained in this note. In very responsible quarters in England — I may mention the name of the journal, the *New Statesman* writing an article based on reports published by the Calcutta *Statesman* in *Maladministration of Bengal*,¹ it was stated that voluntary effort did not do anything to fight the Bengal famine, except the Friends Ambulance Unit, for which I have the greatest regard. I immediately wrote to 'New Statesman' and to Mr Horace Alexander who wrote back that the comments were very unfortunate. If anything, voluntary effort was the first in the field. Subsequently, Government subsidised relief agencies by opening cheap grain shops, etc. but voluntary effort did marvellous work. For

example, the Bengal Relief Committee itself got in cash and kind about 37 lakhs of rupees. Sir Badridas Goenka¹ is the Chairman of this body and Dr Shyama Prasad Mukherji is the Vice President. The Bengal Central Relief Committee had 26 lakhs. I suppose over a crore of rupees were spent on the whole by voluntary organisations and I submit for your consideration that this wrong impression should be removed, because it was really the voluntary effort of non-official organisations that first stepped in. They had to create an ad hoc organisation.

¹ Four Photographs from this document are reproduced in the Photographic section of this Volume (Nos 1 to 4) (Ed.)

96: Memorandum submitted to the Famine Inquiry Commission by the Calcutta Relief Committee through the Joint Honorary Secretary, Mr Jnananjan Niyogi — dt 4.9.1944 (extracts)

Nanavati Papers — Vol. I

[NAI]

The Perspective of the Famine

[Omitted: paragraphs on developing the argument that Bengal was deficit province for about 30 years preceding the famine of 1943. Given statistics to support it. Refers to the impact of the war (pp. 64–5) — Ed.].

Criminal Negligence — My first charge both against the Government of India and the Government of Bengal is that they had no rice policy or food supply policy. The situation in Bengal was daily becoming serious and the Department of Agriculture was guilty of ignorance, indifference and negligence. Even after the hostilities had begun the Government of Bengal or the Government of India showed no anxiety or any concern to develop a food policy as was done in Britain since 1939. The Japanese Commercial agencies retired from Bengal in July 1941 and that was a sign to be fore-warned. As soon as war broke out in the Pacific the Government of India should have compelled the Government of Bengal to adopt and to develop a definite food policy, calculated on all possible phases. But the Government at the Centre itself was absurdly ill-posted and constantly fumbled in tackling the situation by issuing Rice Control Ordinance quite unrelated to the realities of the situation and often ridiculously contradictory and impracticable. The famine of 1943 is a 'Man made' famine as it precipitated through the wanton bungling both at the Centre and the province. The scientific world of today has proved to the hilt that a famine is an anachronism and is an obsolete event in the midst of modern facilities of transport and regional adjustment ensuring proper supply for life and living. It is only man who bungled the situation through lack of efficiency, insight and imagination, absence of the power of anticipation and calculation based mainly on indifference, callousness and want of sense of responsibility which made the confusion worst confounded. The Ministry of 1941–42 cannot absolve itself of its guilt in having allowed the situation to

drift to such a desperate lurch. The then Ministry did not fight strongly and bravely at the Viceregal front to safeguard the interest of Bengal and to rescue Bengal from the shadow of the dark famine which was gradually but steadily betaking Bengal. Rather there is evidence to establish that the Huq Ministry ignorantly connived with the Viceroy and allowed lakhs of tons of rice to percolate to war zones. Die-hard members of the steel frame I.C.S. group too did not care to probe into the situation and to collect and collate such facts and figures as there were in the Government records which could have unmistakably indicated the grim approach of an unprecedented famine. Regrettably enough they were a party in robbing Peter to pay Paul. Even in November 1942 the Coalition Ministry suddenly permitted 7 lakh acres of rice acreage to be converted into jute areas to execute a big hessian order from U.S.A. Seven lakhs of acres could have yielded 1/2 crore maunds of rice at the minimum and at that precarious moment the loss of that rice acreage was disastrous. The change of Ministry at that moment was a change of horse in mid-stream. If Mr Fazlul Huq and Dr Shyama Prasad Mookerjee were being compelled by the Governor to do things against their will or had to condone reluctantly the misdeeds of the then Governor, why had they not the strength and the courage and the sagacity, to turn such grievances into a plank and resign on that score and lead a whirl-wind campaign to warn the people of Bengal about the impending famine and publicly condemn the conspirators and the henchmen in the green room, who were out to stage the tragic 'Man-made Famine drama'? That would have been great, that would have been noble perhaps that would have lessened the vehemence of the catastrophe. . . .

The Complacency and Bungling by the Government -- An open charge of complacency can be brought against the Government of India with a great certainty. With the break of war the Government of India had not devised any ways and means to maintain a food-policy in the midst of war-complexities growing all around. The Government of India never deemed it necessary to move effectively in proper time either to control the situation or to adopt measures to tackle the vital and vast problem. Neither the question of procurement of foods nor the distribution of food through adjustment in supply on an All-India basis received any due attention. A look through the reports of the first series of Price-Control Conferences will show that there was no chalking out of plan but only careless whispers and talks that the rise of price however is ultimately benefiting the poor cultivators in the fields. Such notions and impressions were absolutely erroneous. It was the Government agents and their sub-contractors in connivance with petty and big hoarders who were reaping the harvest of profit out of the helicolly (*sic*) rise of prices. At the direction of the Government of India a benevolent touch was given to soothe the irritation, due to abnormal rise in price of foodstuffs among the Government employees and other essential service employees, with dearness allowance and the real question of solving the problem or tackling prices to be kept within economic means of the people was either shelved temporarily or was left out of consideration for the moment. India Government's co-operation to procure rice did not come forth then. Greater demand for rice began to pour in to meet military requirements and the Government agents had no time to hesitate to buy at a higher cost than the price fixed by the Government. Thus prices of rice kept on shooting up and from time to time the palliative, the dearness allowance, had to be served to larger number of units and on a continuously increased D.A. basis. The Central Government went on issuing Ordinance periodically on rice control both for procurement and distribution and often without any consultation with the Government of Bengal. Objections were put up both to on the plea of military requirement as well as on the point of policy of Government of India to approach a question in the term of All India, when

a province or two might have to share some burden of suffering. It seems that the Government of India was not convinced of the fact that Bengal was really a deficit province. According to Government of India's instructions big industrial concerns which were engaged in helping war-efforts came into the market and in spite of the protest of the local Government this policy of purchase was pursued in Bengal at all relevant periods and during the crisis it produced the most disastrous results affecting the welfare of the general public. Rice ceased to be available in open market — dearness and revenues both increased and the public pathetically suffered. The Grow More Food Campaign initiated by the Government of India without a definite scheme and the proper assessment of its practical application only helped to grow more offices and to grow more officers and the distressing situation continued to deteriorate in every way. The priority scheme initiated by the Government of India was meant to isolate civil supply and to give all possible privilege to all types of personnel who could be brought under that undefined term 'essential services'. After a long tussle of correspondence Government of India had agreed to allot a basic relief quota to Bengal. Mr Suhrawardy often bitterly and frantically complained against the failure and incompetence of the Government of India to implement its promise of supply of the quota to Bengal. Even during the direct regime of Lord Linlithgow as Food Member, no serious attention or attempt was visible to give relief to Bengal situation. Indeed it is amazing to notice that the Governor-General in his speech at the Central Legislature on August 2, 1943 when Bengal was seething under the groan of a tragic famine, no reference was made of the grave situation by His Excellency. The Government at the Centre did not care to know the trend of events prevailing in Bengal. For the first time on May 15, 1943, we find Government of India admitting that there was a food shortage in Bengal and not 'Famine' and facilities to remove grains and other products were allowed from May 19, and traders were permitted to move and sell stocks throughout the larger block of territory. We are of course still doubtful to whose advantage this step was taken. Major-General Wood decided to buy foodgrains worth 100 cr re for the next 12 months. The effect of this declaration was however prejudicial to rice prices in Bengal. Thus it becomes evident that the steps taken by the Government of India were neither systematic nor sympathetic but betrayed definite thoughtlessness, ignorance and unawareness of the realities of the situation which was tantamount to cold complacency and sad lack of the sense of responsibility at the Centre. . . .

The condition precedent to any formula or programme is the change of heart at the centre and in the province of Bengal. We may not be able to change the angle of vision of those die-hard bureaucrats and their henchmen who hold the reins of Administration to-day. We must change the men and transpose the whole plank and shelf on a national basis. Until and unless a National Government is formed, not as a jigsaw gift, but in response to the aspiration of 400 millions of people in India nothing can be achieved. There may be wonderful schemes formulated without the latest scientific knowledge and method but who is to propel the scheme? Where is the will in the State? That will has to be released and enforced, otherwise the scheme will lie on the table as a neat automobile lies idle in a Show Room without wheels and motor. Hence the first requisite to develop a programme to get out of the tangle is the presence of a nationalized will and a nationalized decision. Consequent to a nationalized decision will arise the task of formulating a scheme and a programme of reconstruction. But no such scheme can be effected without the guidance and plan of an Expert Committee to draw up a plan and scheme which is likely to be effective. The Experts Plan Committee will naturally require enough scientific statistical data, facts and figures collected for this particular purpose. Who is to supply such essential scientific data? We shall have to develop a new machinery for this

great work as on its accuracy, bonafide and relative value would depend the whole survey and study to enable the Experts Committee to chalk-out a scientific plan. The old method of collecting statistical figures is no good at all. Dafadar or Chowkidar of the village is the statistical assistant in the field? 'This sunken man with a bluish half-shirt and chapras is the British Government in the village. He is a 'What-Not' man — he is the Majantali Sarkar of King Habu of Bengal'. He counts the ripples and the waves of the river or the number of hairs on your eye within a twinkle of one's eyes. He is a peripatetic counter. His are the figures which occupy the bulk of the British statistical volumes. Figures and facts given by him form the spring-board of all calculations and interpretations in British India. It is his figures which are religiously believed and seriously transmitted from the village thana to other Sub-Division then to the District and from the District to the Calcutta and onward to Downing Street via Delhi. . . .

The fragmentation of the agricultural land is a serious handicap and can hardly be handled unless the confidence of the people in the Government is restored to any great extent. To do away with evil as far as possible we should encourage co-operative farming and collective farming to increase the quantity of production and to improve the quality. The Bengal cattle is really very poor — in number and in quality. It is absolutely necessary to improve the stock and to increase the number. The poverty and ignorance of the peasants prevent them from using any artificial synthetic measure or to utilise local compost. The collection and preservation of seeds have been neglected and the Government supplies of seeds are always bad, inadequate, irregular and belated. No one can depend on Government supply for seeds. After 200 years of British administration in Bengal there are places where men and women have to walk for miles to secure a pot of drinking water and no wonder that in such a country irrigation is unorganised and insufficient. Bengal was a river-woven province, but with the advent of British administration those natural river arteries have been allowed to be choked and in places railways have obstructed their flow. The river reclamation proposal is estimated to require over 300 crores of rupees now. Some day we shall have to spend this colossal amount as a penalty for the negligence of the authorities who rule over us. The frail health of the peasantry is a serious drawback. Owing to malaria our labour is inefficient and cannot put in hard labour. Even for agricultural purposes Bengal has to indent lakhs of non-Bengalee labour to carry on its agricultural labour work as well as to work as coolie, earth-digger and boat-men etc. In spite of thick density of our population we have to import labour as our people are smitten with sickness and are more convalescent than ever cured. On the top of this comes the grinding indebtedness of the peasantry. In 1940 the total indebtedness of the peasantry was calculated to be over 250 crores of rupees, a staggering amount. The real cost to rebuild him will mean not only to liquidate the debt of 250 crores of rupees, but also to put some incentive cash amounting to 500 crores of rupees in their hands to put him on the track of progressive production and earning. Who shall find this Wool worthy (*sic*) amount except a National Government? The unrestricted import of common commodities of daily use from Japan, Germany, England and U.S.A. had smashed the village industries to an irrevocable extent. There is practically no subsidiary industry thriving in the villages today, as all their wants and needs are being catered to by extra-mural goods. The art and heart of the nation are still throbbing in the villages. Where is the State to rejuvenate the art and to revitalize the heart to recoup a prosperous nation? Agriculture by itself now-a-days cannot pay enough to maintain a family. There need to be subsidiary industries organised on co-operative marketing basis to increase the purchasing capacity of the peasant — to enable him to buy proper seed and manure, improved plough and cattle, to improve his dietary and to lessen his doctor's

bill. We have to re-make and reform the whole man, otherwise we can hardly sustain any improvement for agricultural prosperity. Can this parental task be taken and performed by a foreign power? Emphatically – No! . . .

1. [These are allusions to figures of fun in Bengali Children's literature. Majantali Sarkar and Habu Chandra Raja. In his excitement the author of this memorandum forgot that the members of the Commission were unlikely to have read that literature – Ed.]

97: Food Shortage – Procurement in Chittagong (extract from Casey's Diary dt 6.9.1944)

R.G. Casey's Diary, p. 59
[NMML]

September 6th

Stevens (Civil supplies) Called

The Chief Agent's guess is 60-70,000 tons of rice procurement for September – and 150-160,000 tons for October-November. Thus they believe that over 200,000 tons should be procured before the next aman crop.

The monsoon – and hence, the aman crop – is probably about a month late this year. However, in practically all the districts the aman prospects are now good, so far as the state of the crop can be forecasted at this stage. This is emphasised by the fact that prices are tending downwards practically all over the Province.

The rice position in Eastern Bengal is baffling. In the Chittagong Division (Chittagong, Noakhali and Tippera), there is about 15 lakh maunds in Government stocks, with practically no off take (save in Chittagong town – about 50,000 maunds a month). Government stocks in Dacca District are over 10 lakh maunds with a steady smallish off take in the Munshiganj and Dacca Sadar Subdivisions. Faridpur District has about 8 lakh maunds in stock with only a small off take.

The collapse of prices in Chittagong District has been astonishing. In the free market in Chittagong, rice is selling cheaper (and of better quality) than rice from Government stocks. This means that the rice was in the District all the time – but people must have been holding on to it, and only dribbling it on to the market so as to keep prices up – until they were frightened into offering their stocks freely by the fact of the build-up of our Government stocks in the District.

This upsets all our calculations and predictions as to the degree of deficit of Eastern Bengal in general and Chittagong District in particular. Our Government rice stocks have acted as a catalyzer – and emphasise the real lesson that seems to come out of all this – that good sized Government stocks in deficit districts are essential – if only as a magnet to draw private stocks on to the market.

The progress in the creation of the 'Inspection control Branch has been slow, owing to difficulties in securing accommodation and 2 or 3 good grain trade men.

I must stimulate both Chambers and G.H.Q. regarding structural steel for rice storage purposes, and T.G. Shedding (standard Army pattern) for the same purpose.

Calcutta rice stocks are low (and the quality is not good). However, Stevens says that the stock position will be safe by the end of September.

We have Procured 569,000 tons of rice up to the end of August. If we are to get 700,000 tons by the end of October, we need to get 2150 tons a day – i.e. 131,000 tons in two months.

98 Evidence of B.K. Guha before F.I.C. dt 8.9.1944 (extracts)

Nanavati Papers – Vol. II
[NAI]

Calcutta, dated 8th September 1944

Present: All Member of the Commission.

Serial No. – Mr B. Guha, I.C.S. Additional District and Sessions Judge; 24-Parganas & Formerly Relief Co-ordination Officer, Calcutta.

... 19. *Dr Aykroyd*: You were concerned with the removal of destitute from Calcutta? – Yes.

20. Were they in a fit state for removal? Many of them were very weak and ill – The general procedure was this: We used to collect them from the streets, keep them in our centres, both official and non-official for a few days, feed them, give them medical aid if necessary and then take them by lorries, trains and other conveyances to relief camps outside Calcutta. Most of the destitute came from the 24-Parganas and the South side.

21. *Chairman*: Was that a cyclone affected area? – Not exactly. Most of them did not come from the cyclone affected area. Many of them came from places nearer Calcutta. There is a place called Sonarpur about 15 or 20 miles from Calcutta. Lots of them came from that area. There was failure of crops and they could come very easily by train. They did not buy tickets, they simply jumped into the trains, came to Ballygunge, or Sealdah and got down there. They got free feeding in the free kitchens and stayed in Calcutta for a few days. As a matter of fact we had some difficulty in collecting the destitute. They would not agree to go into the relief centres.

22. Why not? – There might have been various reasons. Some of them were professional beggars and vagrants. They found it more profitable to beg in the streets and get their free meals in the free kitchens. And then there was a certain section of the people who were against the Government centres and carried on propaganda. They said to the destitutes 'Government will take you to these centres and from there send you to Arakan or Assam and to the breach in the Damodar and you would be sacrificed there'. This false propaganda had some effect.

23. *K.B. Afzal Husain*: Who was doing this propaganda? – It is very difficult to say. That propaganda was wide and there was widespread rumour.

24. *Sir M. Nanavati*: Did it appear in the papers? – No, it spread mostly by word of mouth.

25. *Chairman:* Was any particular section of the people responsible for that propaganda? — I cannot say that any particular section was responsible.

26. It was just rumour that travels largely and gains strength as it travels? — I can tell you a particular instance, not in Calcutta. I was District Judge of Burdwan and I was in charge of an evacuation camp. There was a breach in the Damodar bank and many villagers were flooded. There was a very big centre in the town of Burdwan and I was in charge of that centre. There were 800 to 900 people sheltered there. An orphanage was being started in Asansol and I and my subordinate officers were trying to select about eight or ten orphans to take to that centre in Asansol. We tried personally for two or three days. At first some of the orphans were persuaded to agree but thereafter they would not go and when we enquired what was the reason; we were told that they had been told by some people that they were being sent to Asansol and if they went they would be killed. It was extremely difficult to get even 10 orphans. . . .

99. Evidence of Mrs Saudamini Mehta, Mrs Maitreyee Bose, Mrs S.C. Roy and Mrs Ayesha Ahmad Rep. of A.I.W.C., before F.I.C. dt 14.9.1944 (extracts)

Nanavati Papers – Vol. III

[NAI]

. . . 26. *Chairman:* You finally got the refund? — But then there was such delay in giving the stock. In those three or four weeks a lot of people could have been saved. One thing more on point No. 8. We have said there that many women and girls who were destitute were being driven to prostitution. We being a women's organisation we were specially interested in that. In September a Bombay paper, *Janmabhoomi* had sent a representative to study conditions here. He wanted to see famine conditions and I toured the whole city of Calcutta from the North to the South. In the afternoon between 12 and 3 these destitutes were resting on the footpath and I saw many fellows, goondas I was told, harassing these women. This was happening in College Street, Nimtolla Ghat and all these places.

27. *Sir M. Nanavati:* Were there no policemen there? — The police were there but they did not take any notice. *Mrs Bose:* I know a case where a constable himself was trying to decoy a girl. There was a local gentleman there and he went and threatened him with action and said he was a C.I.D. officer and would see that the constable was properly dealt with.

28. Did not private agencies come to the help of these people? There must be lakhs of people and Government alone cannot be expected to deal with the problem. — *Mrs Mehta:* Private bodies and individuals tried to do. But our Conference could not take up that work at that time.

29. Did you bring this to the notice of the Government? — We had put it in the papers and we published our report also.

30. *Chairman:* What do you suggest should have been done? — They could have done something through the police. They could have asked us or any other women's organisation to take up this work with the help of the police. *Mrs Bose* — the main thing was these women

ought to have been given shelter in big vacant houses. There were so many places requisitioned for military. Why could they not be used for sheltering these poor women.

31. *Dr Aykroyd*: Of what age were they generally? — *Mrs Mehta*: Between 14 to 20. *Mrs Bose*: Even younger. That was more in the mofussil, specially in the Chandpur area. *Mrs Roy*: In Calcutta they were taking away the women. When the Government began cleaning up of the city they took away these women forcibly and they were in this process taken away from the children. I have seen that in certain homes children were crying for seven or eight days or a month before their mothers could be traced.

32. *Chairman*: They were reluctant to go — *Mrs Mehta*: Yes. *Mrs Bose*: A maid servant's daughter in my sister's family was sitting on the doorstep waiting for her mother to finish her job. A lorry came and took her forcibly in sight of the mother thinking her to be a destitute child. No one would listen that she was not a destitute child. It was afterwards with the help of A.R.P. officers that the mother and child were re-united. We started many children's homes and too many children living there were lost. We started seven children's homes. *Mrs Roy*: I want to say something about the milk supply in Calcutta. The Government could have stopped cow slaughter if they had thought of it earlier because they knew that there would be shortage of milk supply if the cow-slaughter went on and, therefore, they could prevent it when indiscriminate slaughtering was going on. Private people wanted to purchase cows and buffaloes from outside the Province, but they could not do so because the other provinces had put a ban on export of cattle. It is difficult now but at the beginning they could have done something. Even then the contractors were buying all milch cows and expected cows but the Government did not take any action against it. Now there is hardly any milk. We have always had deficiency of milk but it is now absolute deficiency and there is no milk for the children. We have given the Government some suggestions but they won't take them up. They would not come forward to have co-operation with us. Last year, during the famine period, we saw with our own eyes little babies lying dead near our houses and all over the city. We could not provide milk to all even though we tried to open few milk centres. We got some milk from the Red Cross but we could not get enough fresh milk. We had twelve centres here and centres in the mofussil under the auspices of the All-India Women's Conference but they were not sufficient. Even then children died like flies. Children died in the largest number and then men died and then women died. The result is that they are absolutely devitalized. I am talking of the whole new generation. They are susceptible to epidemics, and chronic diseases. If we are to do anything, we must do something. The Commission can do a lot for rehabilitation and regeneration of the society. *Mrs Mehta*: Let me draw your attention to the export of ice cream to Bombay from Calcutta. Magnolia ice cream is sent in containers from here to Bombay to be sold there.

33. They have prohibited making ice cream in Bombay — They have prohibited there.

34. How do you get over the difficulty of chhana. I am told lot of sweetmeats are made from chhana and not milk — *Mrs Roy*: If you put lemon juice in milk, chhana comes at the top and it is used for sweetmeats like sandesh, etc. It cannot be had in Bombay but you get it here. We could save thousand of maunds of milk if separating of milk were stopped. We asked the Corporation to stop it so that we could use this milk for the children but the Corporation did not listen to us.

35. There is difficulty of keeping milk in good condition especially during this part of the year — We are not thinking of chhana that comes from distant places but we are thinking of chhana that comes from near Calcutta. It is quite a lot. If this chhana from near about places can be stopped from entering the city, then about four thousand maunds of milk can be saved.

Mrs Bose: Arrangements of cold storage can be made on the trains. If Air conditioned coaches can run from Calcutta to Bombay, why should not cold chambers be provided on trains.

36. It is not so easy to provide cold storage — *Mrs Mehta:* Milk can also be rationed in Calcutta. In Bombay the Corporation is giving children under two years one-fourth seer of milk per day.

Sir M. Nanavati: In Bombay the milk scheme is working quite satisfactorily

37. *Dr Aykroyd:* If you have the idea of releasing milk by stopping the production of ice cream etc. the milk thus liberated would be very small. It will only be a model gesture rather of material good. — *Mrs Mehta:* I do not think so, take the number of ice cream and other milk supply shops, there are thousands.

38. *Mr Ramamurty:* Would you also like to stop the supply of milk for tea? — *Mrs Mehta:* It should be rationed.

Yes in that case we can use lemon juice or something for tea instead of milk, as they do in England.

Chairman: No, it is not used in England. There is shortage of milk there, but milk is rationed and everybody gets it because the supply is enough.

(*Mrs Bose:* Here only children and expectant and nursing mothers might be supplied with milk.)

39. Would you stop supply of milk for adults also? — Yes, we can go without milk.

40. What you are aiming at is a scheme like the one now working in Bombay, is it? — Yes *Mrs Roy:* We must grow more fodder also.

41. Fodder is a very difficult problem, the whole land is producing food. — *Mrs Mehta:* Everything is difficult now, but if you want to do a thing you can get it done Must be done, that is our point. *Mrs Bose:* Moreover, all the fallow land has not been used for food production.

42. *Mr Ramamurty:* Every child saved is a chud saved. . . . *Mrs Mehta:* Yes, not only the poor but the middle class children also are not getting any milk now.

100: Food Situation (extracts from Casey's Diary dt 16.9.1944)

R.G. Casey's Diary, p. 73
[NMML]

September 16th.

I am told that there are too few Circle Officers and that (quite apart from the additional Circle Officers necessary to cope with Relief in necessitous areas), we should have double the number — and halve the size of the Circles. They have to supervise the Union Boards and do innumerable other duties. Ernest Porter agrees with this.

The universal cry from wherever I go is that the salt quota (which is calculated to provide a half seer — 1 lb. — per head per month — including the provision for cattle) is not enough. They ask seer. They say they don't even get the half seer.

They ask for staff (paid by Government) to help them cope with the work of rationing and of running the various Food Committees from District to Union and town.

They suggested to me bring the jotdars under the same obligation to declare their stocks, as dealers and merchants.

The Enforcement Staff now does little more than collect intelligence. They ask for 2 more sub-inspectors and 6 watcher constables.

The Rajshahi town Food Committee consists of the hopelessly large number of 46 members, which the wretched District and Sessions Judge (a good man called S.N. Guha Roy) presides over.

101: Evidence by C.J. Minister before Famine Inquiry Commission dt 20.9.1944 (extracts)

Nanavati Papers - Vol. IV

[NAI]

... 29. What exactly do you do in the Enforcement Branch at the present moment? Is your staff adequate? — No, it is not. Necessarily the original fixation of staff had to be tentative

30. Are you going in for increased staff? — As I mentioned in my memorandum I have applied for extra staff and that has just been sanctioned. Under heading (a) (III) I mentioned we have asked for certain increases and when I left office yesterday, though I had not actually received the written order, but I was told the sanction has been given to all except, perhaps, the Deputy Superintendent. I am not quite sure whether he has been included in the sanction or not. At any rate, if he has not been included it is only a matter of few days before we will also get that sanction.

31. Even that does not give you much staff? No, it does not.

32. In view of all that has to be done with regulations, control of prices? — Price control is not done by us.

33. You have got to see that price control is observed? — The situation at the beginning was this. With the spate of new legislation and also with the very heavy demands made upon every policeman, few if any, had any detailed knowledge of the orders and the controls generally. That, I think, is fairly obviously bound to happen, and so there it was. First of all, really, these people employed for the enforcement of rules and regulations and embargoes, had to sit down and study exactly what orders had been issued; and I mean the fact that police station staffs do not know very much about it is frequently exemplified because instances have arisen in which cases started under rule 81 of the Defence of India Rules should have been started under Ordinance xxxv, and that sort of thing is frequently happening.

34. Have not got all these orders printed in the form of a manual for easy reference by the staff? From the middle of April last, as I said, I have been publishing an additional part to the weekly Criminal Intelligence Gazette, and that of course is building itself up into a manual now.

35. That means collecting everything from numerous gazettes, and if you have got all those together in a manual that would be more helpful? I fear that any such manual would be of little value because by the time it comes out from the press and is circulated, the orders will be different and it will have to be modified and amended and altered.

36. Yes, but you might get it under the different heads, e.g., Foodgrains Control Order, and then the anti-hoarding orders under Ordinance xxxv, and so on? — There it is; the original Foodgrains Control Order was itself amended' and Ordinance xxxv is again subject to amendment, and then there is an additional issue of fresh notifications under them.

37. Oh, it is bound to be; but would not a manual which brings together all orders in one place be much more helpful to the staff? After all, it must all be very new to everybody? — Actually, if they themselves index these weekly issues, then it is not difficult at all.

38. But officers never index these issues? — Of course if they do not, it is their own fault; but my own copy is indexed and I can work very well with it.

39. What are you doing as regards enforcement of embargoes? — Oh, well, that was not in our directive.

40. But it was? — Not in the way of physical enforcement of embargoes. Our part was confined to finding the weak spots in cordoning and the collection of information of such weak spots, because of course we with this small force cannot possibly do anything in the way of physical enforcement of the orders.

41. And how is the District Police Officer going to do it? — He? — not.

42. The staff employed on the enforcement of these embargoes is nil? — Practically speaking, yes.

43. There is no enforcement of the embargo? — There it is. Of course, since this Enforcement Branch came into existence, they have collected a good deal of information and they closed up certain loopholes.

44. How are you going to close the loopholes unless there are adequate cordoning arrangements? — By swooping down and then collecting for example a convoy of carts or boats, that naturally can only be done in the d., weather when the overland routes are open and waterways are defined; but the moment the water rose and waterways lost their definition and it is possible to go across country by boat, nothing of course could work.

45. Of course there must be extreme difficulty in the cold weather in the Bakerganj area? — There are no carts and you have got no roads? Then you have defined waterways and the boats must move along these defined routes.

46. But defined routes are pretty numerous? — It is true: but, at the same time, there is a tendency of course for the bulk of the traffic to follow particular routes.

47. Your Special Superintendents in districts have nothing to do with the embargo at all? — Nothing, except finding weak spots. The trouble is that the strength of the provincial police force is such that it does not admit of the detachment of large numbers for this purpose.

48. It is obvious: but naturally the District Police Officer the Superintendent of Police, has got to deal with these control orders; and if he does not, he will let procurement go by the board? — Some attempt has been made and the Home Guards have been roped in fairly largely.

49. Do you think they could be trusted? — Oh, definitely not. Many of them have profited considerably over that.

50. Is the enforcement of these control orders a duty which could be entrusted to the Home Guard? — Well, except that it is a form of help; is it not? They would be co-operating and preventing unregulated movement.

51. The Home Guard is a voluntary force, is it not? — Yes.

52. Do you think whether you could depend upon a voluntary force to ensure proper enforcement? — In fact, of course, it did not take very long for us to find out that many of

these had constituted themselves into unofficial toll-keepers: they did not stop anything from going out but they would not let anything pass without paying the requisite toll.

53. Obviously the enforcement of the embargo is an essential part of the procurement programme? — It is. But here again, of course, when the Enforcement Branch came into existence and began to get to work, we soon felt other mistakes had been made which would also ruin the procurement plan. To begin with and this seems to be universal—licences under the Foodgrains Control Order were issued indiscriminately. No question was raised as to whether or not such a person existed or even as to the age of the applicant for a licence; for instance in 24 Parganas a child of eight years of age is the holder of a licence under the Foodgrains Control Order; and in the Sadar Sub-division of Bakerganj 4,550 licences under the Foodgrains Control Order were issued; and then what was worse as we discovered later on if a licensee in Bakerganj having obtained his licence under the Foodgrains Control Order said: 'I have 35 boats', he was forthwith given 34 certified copies of his licence on the principle of one per boat; and these licences were issued, instead of specifying the place or places where the business may be carried on, with 'the District of Bakerganj'. Equally, licensees in Tippera had their licences valid for the district of Tippera. In consequence, those who wanted to cheat the export embargo filled up their boats with foodgrains, took them up to any convenient place where the boundary is in the middle of the water and where nobody can say where the boundary actually is; and he would then be met by a boat from Tippera. The two will change over. The Bakerganj licensee gets into the Tippera boat and the Tippera man in to the other boat. Both will go and nobody can do anything because each has a valid licence and it is impossible to prove that the transfer had taken place or that he had infringed the licence. I suggested to Stevens about two months ago that a date should be fixed on which all existing licences under the Foodgrains Control Order should become void and that in the mean time fresh licences should be issued on a very restricted scale to come into effect on that pre-arranged date. He told me that proposals had been made and were pending with the Hon'ble Minister of Civil Supplies.

54. What does your staff do as regards the Foodgrains Control Order? Does it check stocks? — Not to a great extent because the licensees are not furnishing their returns. I told the district officers to look into this matter to see that returns are sent in and if they found that returns had not been sent for a long period to start prosecutions.

55. What is your staff supposed to do? It is supposed to get in touch with the Licensing and Returns officer who is to receive these returns of stocks and if the returns flow in regularly and punctually as they should then they would select a certain number of cases and see whether the stocks are according to the returns.

56. Your staff will do the inspection? — Yes. That is being done, but we could not get on with it rapidly because these returns are in arrears in many districts. I noticed in yesterday's *Statesman* that in Noakhali they had prosecuted 150 persons for not having put in returns. That is one result of the Enforcement Branch; but until these returns are sent in punctually and properly there can be no checking. That of course is a fundamental necessity, but we very soon discovered that in fact these returns were neglected and ignored. . . .

68. You cannot have a training school unless you recruit a considerable number. What about dishonesty in general? — It is a very gloomy picture, so much so that I have to confess I do not know whether I can trust anybody. This has driven deep into the social life of Bengal. Before this the temptation was not so strong but now the temptation is very much stronger. The amount of bribe to be offered are very much higher. The profits made are very much

higher. Take the case of salt. The controlled price is seven rupees a maund but one can readily obtain for it thirty five rupees a maund and perhaps more in the black market. For example, somebody comes down to Church Lane and obtains a permit for two thousand maunds of salt. He has to pay fourteen thousand rupees for that but if he can salt it for seventy thousand rupees, won't he be prepared to pay five thousand to the clerk in the Civil Supplies Department who will assist him to get that permit or anybody else whose co-operation is necessary.

69. Salt which is issued on permits is presumably issued for transport to certain districts. That is the theory. Copies of these permits are now sent to the districts. If it does not arrive who knows where it has gone? The man is never found.

70. He disappears? Certainly.

71. Can you not prove it? — How can you? He produces an empty boat and says that unfortunately the boat sank and after some days he managed to salvage it, but the salt had dissolved.

72. *Dr Aykroyd*: Is most of the corruption in connection with food only? — No, kerosene oil is another commodity which affords certain people enormous profits. . . .

(Omitted: 73–81)

82. Have you any complaints about Government stockists being dishonest? — Yes, of course, there are complaints. Every class of person who has anything to do with it is the subject of complaints. A very large percentage of consignments never arrive in full. Then again I think it is only one per cent that is actually weighed. They weigh in the godown, being careful to select the one per cent for weighment from the bags which obviously are not full. Therefore, if you take the average and multiply it by 100 or whatever the factor may be, the total stock may on paper be less than the actual stock. That gives them a margin.

86. *Dr Aykroyd*: You have given us I think a gloomy picture about enforcement of foodgrains generally. What are the prospects of improving the whole system of enforcing food regulation? Can you suggest anything for that purpose? — Well my opinion is that the first requirement is that there should be a reduction in the number of persons licensed to trade in this commodity and I think that is absolutely essential. I know of a person, for instance, who was not long ago released from registration under the Criminal Tribes Act but he is now a licence under the Foodgrains Control Order. I think he is not an entirely suitable person for that class of trade and so it seems to me that the first necessity is a reduction in the number of licences and of course this applies to all commodities. Then there are quite a large number of persons who have been authorized to issue licences in respect of commodities not only Sub-divisional Officers but also Circle Officers. (Sub-Deputy Collectors). The result is that nobody can say that any permit produced is a proper document. There are so many persons entitled to issue permits that it is impossible to supply the police or anybody else with the specimen signatures of all those persons or, even if it were done, there would be so many specimens that it would have no value. Therefore I cannot help thinking that the first requisite is a reduction in the number of licensees and with that also a reduction in the number of authorities who may issue such permits.

87. *Chairman*: Is a licence required to sell standard cloth? Oh yes, under the Bengal Cotton cloth and Yarn Control Order all sales require licence. I have just heard that in Burdwan the hawkers who are to pay Re 1 as licence fee were told that they had to pay Rs 10. Oh I now remember it was not for cloth licences but for kerosene.

88. They had to pay this extra amount to get a licence to sell kerosene oil? — Yes, and they were told by the persons from whom they obtained their supplies that if they wanted to take out a licence they would have to pay Rs 10 each and the agent in the above case was putting Rs 9 in his own pocket.

89. But on the other hand you cannot reduce the number of licences for the sale of cloth, kerosene oil? It must be a very large number of people. But here again let me refer to the number of licences issued for the sale of cloth in Calcutta. The other day the Deputy Director for Textiles, Bombay, was over here and he told me that he had enquired and ascertained that in Calcutta alone there were 16,000 licences for the sale of cloth. A black market seems inevitable with this large number.

90. Why, because it cannot be controlled? — To begin with, you cannot control them and another thing is that the supplies are not adequate for that large number of licences. With that large number of licences each trader can derive only a small profit and it is quite possible in view of his same margin of profit from the stamped price that the trader may alter the stamped price, say, from Rs 6 to Rs 8.

91. So your first point is that there should be a reduction in the number of licences under the Foodgrains Control Order? — Yes.

102: Sir John Woodhead on the famine (extracts from Casey's Diary dt 20.9.1944)

R.G. Casey's Diary, p. 78
[NMML]

Sir John Woodhead called. He is anxious about two points on which his two Indian members are pressing him — (i) the attack on Ispahani — and (2) their preoccupation with Government procurement to the exclusion of Chief Agents.

I suggested that he should refer to the necessity for Provincial Economic Advisers, as a means of anticipating economic events.

Woodhead told me that Baker, Hartley and Kitchen had asked him when the privilege to taking proportionate pension would be reinstated after the war. The writing on the wall!

103: Evidence by Maj. Gen. F.H. Skinner, O.B.E., Eastern Command before the F.I.O. dt 22.9.1944 (extracts)

Nanavati Papers – Vol. IV
[NAI]

... 18. *Dr Aykroyd*: Take a place like Dacca. Would there be a considerable number of restaurants there catering the army? — To the best of my knowledge there are none. To the

best of my knowledge the only expansion in Dacca is the Dacca Club. We have not a mess there and the hospital camp and the Dacca club undoubtedly serves to an extent three or four or five times more than it did two years ago. But the Dacca town is out of bounds to the troops for various reasons and the only activities on the British side are the official recreation rooms plus the local voluntary organisations.

19. *Chairman:* If you have got an addition in Dacca of a certain number of persons who are of European style then it is putting a considerable drain upon the supply there? — Yes, it does. From the official point of view Dacca is a difficult problem. We have got our transport problem. That is also difficult. We have undoubtedly as many as 18,000 European styled people living in Dacca and Mymensingh.

20. *Dr Aykroyd:* I think in Dacca we heard strongest complaints on the subject. Do you think Dacca was a very exceptional case? Dacca was exceptional in regard to the overload that we put on Dacca. The proportion of people living in a higher standard in Dacca is I think, greatly higher than anywhere in Bengal.

21. *Chairman:* How many are they? — Roughly 18,000 in Dacca itself.

22. Including European rationed strength? — Including Americans.

23. Do they live largely on the Dacca supply? — Milk has been 100 percent purchased. We are now using 75 per cent tin milk. We are also now putting in a dairy which will begin producing milk in November. It is now in the process of being put into action. During the hot weather we cannot get much vegetables in Dacca. We get occasionally about nothing regularly. We do depend upon tin vegetables. We get very little British vegetables in Dacca.

24. The supply in any case is short because it comes entirely from Darjeeling? — Yes, we cannot push on that in time to fit in our need.

25. So you draw on the local supply? — There we get very little.

26. There is no difficulty about non-European type vegetables? — We had no difficulty about real Indian type vegetables.

27. Do you pay a very high price for Indian vegetables? — We pay appointed Rs 12 per 100 lbs. It is 4 times the pre-war price.

28. Are you undertaking any schemes for producing Indian vegetables? — Yes. Bihar has got a scheme which is a very big scheme which gives us almost a thousand tons a month throughout the year. During the winter season it is British type and during the summer it is Indian type.

29. In Dacca you cannot produce Indian vegetables? — We had no difficulty in getting Indian type vegetables.

30. If you could do it in Dacca surely the prices would come down? — Our demand on the Dacca side is very largely for British type of vegetables.

31. But British type of vegetables are not always available. You have also to depend on brinjals and pumpkins, etc. — No, they won't take them. The American people will not touch Indian type vegetables.

32. What about the British? — The British take these Indian vegetables.

33. *Dr Aykroyd:* You have got a big scheme in Bihar? — Yes the Provincial Government has a scheme in Ranchi. The Bihar Government there produced 800 tons of vegetables every month.

34. *Chairman:* It is not located in Ranchi? — It is in Bihar.

35. 800 ton a month from November? — Yes In Barrackpore we have got 148 acres, we have manured it and planted it. Most of that cultivation will be waste because there is a very big operational headquarters coming into Barrackpore.

36. It is rather unfortunate? Can't it be located anywhere else? — Will it be operational headquarters for the coming season? — Barrackpore is selected solely and simply, because of the very high scale of communication that exists there.

37. What communications you mean? — Trunk telephone and direct carriers to Delhi and all the forward areas and a very high grade of wireless installation there.

38. Does that mean to say that this will increase the demand on Bengal? — I cannot tell you that, Sir. You probably know, without talking military secrets at all, there are very big bases developing all round here. What is coming on to them we do not know. If they are all occupied, it may be as much as another 20,000 European rations.

39. *Dr Aykroyd*: So, without going into military secrets, we could take in a general way that the demand on Bengal is likely to increase within the next year or so? — The local demand on Calcutta will be as much as 2,500 European rations, over the next six to eight months. Outside Calcutta I just don't know.

40. *Chairman*: Because the air-fields will be occupied, it might be very considerable? — It might be up to 20,000.

41. *Dr Aykroyd*: Do you think that your plans for using these additional foods will meet this extra demand? Are they designed to do that? — Designed to.

42. *Chairman*: Are you satisfied that a sufficient burden is placed upon the other provinces? — That is the burden is not concentrated on Bengal? — We have been trying to limit our demands on Bengal either by producing ourselves (e.g., vegetables) or by bringing them into Bengal: . . .

104: Casey's talks with M.A. Ispahani (extracts from Casey's Diary dt 26.9.1944)

R.G. Casey's Diary, pp. 83-4
[NMML]

September 26th

M.A. Ispahani called. I told him that I thought that he should appear before the Woodhead committee and give evidence himself on any points on which they were in doubt.

Ispahani was optimistic about the Amar Crop. His only fear is as regards a possible cyclone in October.

As to the Braund report, he was very pleased with Braund's handling of it and said that he had learned a great deal.

Ispahani puts the important points arising out of the Braund Enquiry as follows:

1. Storage. The Chief Agents should be consulted about the location of new storage units.
2. The present clearing agency arrangements should be abolished. The Government should own and run its own storage and clearing machinery — or, at worst, the Chief Agents should be asked to do it. The present system is clearly a weak point in the system.
3. The position of the sub-agents at present is unsatisfactory. They may well be profiteering at the expense of the cultivators. The Chief agents should spread their network downwards

much more and may be they will have to quadruple their staffs in order to do so. This is way it has been recommended that their areas should be smaller. Sub-agents should be practically excluded and their work very largely taken over by the Chief Agents. There is a lot of dirty work being done by the present system of transport by boat. The contractors should be made to accept responsibility for quantity and quality transported. Grain is delivered short and bad grain is being substituted for good. We should use our own Government boats or engage only contractors who will accept our stated conditions of work.

Whatever revised procedure that is to be adopted should be argued out and decided upon by mid-October.

105: Ispahani and Woodhead Commission (extracts from Casey's Diary dt 27.9.1944)

R.G. Casey's Diary, p. 84
[NMML]

September 27th.

Stevens (Civil Supplies) called. He is disappointed with Ispahani for his having put his name to some of the things in the Braund report.

We discussed Ispahani in relation to the Woodhead Committee. He says that the spearpoint against Ispahani is Ramamurty, one of the Madras Advisers¹. Stevens rightly asks how Ispahani's activities, be they right or wrong, have any bearing on the 1943 Famine — and how do they come within the Woodhead Commission's terms of reference? If I have done any thing wrong, it is surely a domestic affair for the Government of Bengal.

¹ See Document 109 below in this connection - Ed.

106: Casey's talks with Sir Theodore Gregory and R.H. Hutchings (extracts from Casey's Diary dt 3.10.1944)

R.G. Casey's Diary, p. 90
[NMML]

October 3rd.

Sir Theodore Gregory and R.H. Hutchings arrived to stay and I had talks with them this afternoon.

Gregory said that youngish economists of any consequence won't come to India, as their

future here is so uncertain. He thinks Hyder is the best of the Indian Economists. There is a man (a Muslim) called Queraishi at Osmania University, with plenty of brains and bounce but he is not very enthusiastic about him.

Gregory fears the 'adjustment crisis' in India and the possibility of mass unemployment in the cities, owing to the deflationary effect of the immediate postwar.

We can expect a drop in the price of rice when Burma, Siam and Indo-China are freed. Hutchings believes that the cultivation of rice in Burma has been much decreased during the Japanese occupation. Burma was a big export producer — but with no export market sowing will be much reduced. Hutchings thinks we will get no export rice from Burma for 12 months after we enter. Even then the rice will be controlled and distributed by London and Washington and not India. So also with Siam and Indo-China rice. Malaya is highly deficit in rice.

As soon as the freeing of Burma is in sight, we will have a powerful argument with those holding force in Bengal, as the probability of a sympathetic fall in rice here is obvious.

Hutchings is concerned as regards to say publicly about rice for Bengal for 1945. I suggested that he should announce that we will get 100,000 tons and that the G. of I will hold substantial tonnage of rice or paddy at some suitable place for the N.E. Region of India. The difficulty will be with the rest of India (which regards sending rice to Bengal in the same light as sending coals to Newcastle) who will ask why Bengal should get 4 lbs. of rice when the south of India gets along with very much less.

We will get over 300,000 odd tons of wheat in 1945.

Hutchings wants to get the price of rice down to 10 or 11 rupees all round.

107, Procurement Progress (extracts from Casey's Diary dt 4.10.1944)

R.G. Casey's Diary, p. 91
[NMML]

October 4th

Saw Stevens (Civil Supplies)

Both procurement and the aman crop prospects are steadily improving. In place of the 70,000 tons of rice expected to be procured in September, just under 125,000 tons were procured (685,000 tons actually delivered and the balance in the shape of forward contracts) — the best month we have had; May produced nearly 120,000 tons. We have now procured practically 700,000 tons (644,000 tons actually delivered and the balance in forward contracts). The Chief Agents confidently believe we will get another 150,000 tons before the next Aman.

If this happens, we will have about 450,000 tons in our hands before the next Aman — less probably an off take in the meanwhile of not more than 100,000 tons — i.e. We may well end up the crop-year with 350,000 tons in the hands of Government by the end of November.

We had nearly 240,000 tons in Government hands in the Districts in mid-September.

However, the danger period for cyclone and flood is now on us and we can't throw up our hats yet.

Ispahani is optimistic — that, bar calamities, the crop will be a good one and that procurement will be easier in 1945.

In the last three weeks, the rain has been just what was wanted and, in consequence, the crop prospects are a very great deal better than a month ago.

108: Nanavati to the Secretary, F.I.C., enclosing the correspondence between N.N. Sircar and Linlithgow

Nanavati Papers, List of Literature, Item No. 4
[NAI]

Camp India
New Delhi
November 7, 44

The Secretary,
Indian Famine Inquiry Commission,
New Delhi.

I place herewith copies of the correspondence Sir N.N. Sircar had with H.E. the Viceroy (Lord Linlithgow) in August 1943 in connection with famine distress in Calcutta at that time.

The correspondence is very pertinent to our inquiry in so far as it reveals the attitude of the Government of India towards the relief measures to be improvised to mitigate it. Among some of the important causes of Famine in Bengal are the military measures adopted by the Government of India in that area and it was their duty to see that the people of Bengal got immediate relief from them.

The original letter from H.E. the Viceroy is with me and will be available when required. I have full permission from Sir N.N. Sircar to make any use of the papers as I liked.

The chairman has seen the papers.

36/1, Elgin Road,
Calcutta.
August 24, 1943.

Enclosure 1

My dear Lord Linlithgow,

I crave indulgence for stating some facts about the situation in Bengal. I presume you have already seen the enclosed pictures,¹ but I make some remarks which explain themselves.

Picture No. 1 — An angry outburst of Mr Savage of the rotary club led to orders for removal of dead bodies. As regards persons not dead but who had actually collapsed (not merely about to collapse) orders came into operation from 16th August. Between 16 and 21 August 700 bodies were removed by A.R.P. organisation and 63 by the Police, which means 763 persons had actually collapsed on the pavements in Calcutta. It is stated in today's 'Statesman'

that 'from August 15 to August 23 the Police removed 142 bodies from the Streets corpses of the dead from starvation. This does not include removal by other organisations.

Picture No. 2 – Is a scene from a free Kitchen. With the help of some friends I have started 'Elgin road free kitchen' where about 1250 persons are daily supplied with gruel, and over 150 babies supplied with milk. In Southern Calcutta the different kitchens supply food to 12,000 persons daily, while I am not aware of the numbers relating to Central and Northern Calcutta, but the total for Calcutta will be in the region of 30,000 persons daily fed by unco-ordinated private charity. The condition of many can only be judged if seen, and this huge crowd roam about in Calcutta in search of food. They have no shelter even for the night, no sanitary arrangements, and it is not surprising that the Health Officer has reported that increase of Cholera cases is due to these wretched people. In the kitchens, cases of children with small-pox have been noticed. Today we had three cases requiring immediate removal, but every hospital was full – at least that was the reply we received. Yesterday we had a case of a woman with her boy of 8 arriving at the kitchen, just in time for the boy to expire before us including the mother.

The 'poignant scene' in picture No. 2 shows about a dozen children, but such cases came up to hundreds.

The picture shows a Calcutta scene – but I presume you have read Mr Takkar's letter published in the *Times of India*, after his recent tour in the district of Midnapore. He estimates such cases as 'tens of thousands and not thousands'. This is not rhetoric, as it is confirmed by workers in the District some of whom I meet from time to time.

Other districts, e.g., Chittagong, Noakhali, Faridpur and 24-Parganas are not much better off.

Picture No. 3 – I believe this is a scene from Elgin road kitchen. We had no notice that photos were being taken, otherwise we could have shown many cases where conditions were even more harrowing. Cases are not rare of babies and little children whose parents have perished since their arrival in Calcutta. As yet there is no place where they can go.

Picture No. 4 – These women having tramped for miles lie down on pavements packed like sardines, exposed to monsoon rains. Some of them will get a seer of rice late in the afternoon next day, and some may get nothing. This is explained by what can be verified by a visit to the place viz., on this particular pavement the number of women exceeds 2000 daily.

Picture No. 5 – Shows the dying, a familiar sight in most parts of Calcutta.

Picture No. 6 – Picking up from dust bins has now lasted several months.

The greater the number of free kitchens, greater will be the influx increasing to an alarming degree the danger to the health of Calcutta. Even yesterday Government issued a communique expressing its desire to have free kitchens outside Calcutta on the roads leading to it. Adequate measures on these lines cannot be completed by Government till the middle of October, according to my information, and in the meantime unless we are prepared to allow 30,000 persons to die, we cannot stop the free kitchens, though we know very well that what we are doing is daily increasing the danger to Calcutta. It is essential that the measures should be expedited and completed before October. We also feel that private organisations cannot cope with the situation, but Government is getting some breathing time. Whatever the amount of foodstuff coming to Bengal people will continue to die of starvation, unless Government is able to supply rice at reasonable prices as against Rs 41/2 prevailing in Calcutta and Rs 60 – in Contai. We had price control till March 1943. That failed. Then control was off. It failed still more miserably, and now we are having control again viz., Rs 30 from 28th of August

and Rs 25 from 15th September. Even if this time control is effective, how many would be able to pay these price.

About hoarding — According to Government 100,000 committees visited every house in the mofussil and the same was done in Calcutta. No hoards worth mentioning have been discovered.

A very good lady, Miss Holmes (doctor) has seen the children coming to our kitchen and in her opinion they cannot be expected to survive, if after getting a little milk, they have to remain exposed on the pavement for 24 hours before they can get milk again.

Government must attend to the making of some provisions for shelter of the babies who have lost their parents, and for persons seriously ill.

I am not suggesting that thousand of lives have not been lost already from starvation, or that thousands more will not perish, whatever may be done in a situation which has got out of control — but sooner the authorities take complete charge of the situation with public co operation the better. Sudden influx of destitute persons should not have been unexpected, but even if it were so more than a month has elapsed, and as yet nothing worth mentioning has been done by the authorities, except what is gratefully acknowledged viz., since last three weeks foodstuff has been supplied to the 'free kitchens' and but for Government support, these kitchens could not have functioned as they are doing.

The efforts and generosity of the Marwari Community cannot be sufficiently praised, but so far as European Mercantile interest is concerned, they have so far have made provisions for their workmen.

It has always been the policy of Government in the past not to stint expenditure for saving human lives in famine-stricken areas, and I sincerely trust that the same policy will be followed now in dealing with the acute conditions in Bengal. The expenditure is likely to be heavy, but that ought not to be a deterrent when it is a question of saving the lives of thousands of men, women and children. In writing this letter, it is not my object to attribute blame to anybody and all that I am anxious for is that immediate and adequate action should be taken.

I remain,
Yours sincerely,

Sircar

Viceroy's Camp,
India,
(Bombay)
30th August 1943.

Enclosure 2

My dear Sir N.N. Sircar,

Many thanks for your letter of 24th August. I am, as you know, always glad to hear from you and I always read with close attention anything that you send me.

2. I am keeping in the closest touch with the situation in Bengal, and I fully realise the nature of the problems falling to be handled. You make various suggestions in your letter as to what government should do. Government in this case is of course the provincial Government of Bengal and I have no doubt that you have put your suggestions to Ministers, for it is to

the Provincial Government that it will fall to deal with then. I would only add that like you I am much encouraged by the great efforts that are being made by private individuals or by non-official bodies to lend such assistance as they can. As for the European commercial community which you mention, they are making a most significant contribution to the easing of the position by the arrangements they have made, and which you mention in your letter for feeding their workmen, whose numbers are very substantial, and reducing to that extent the general strain on the resources available.

With all good wishes.

Sir Nripendra Nath Sircar, KCSI.

Enclosure 3

36-1, Elgin road.
Calcutta
Sept. 15, 1943.

My dear Lord Linlithgow,

I have to thank you for replying to my letter of 24 August 1943, about famine in Bengal. I confess that the bold statements that your Ex. is in close touch with the Bengal situation and that the matter is ready for the Provincial Govt. have given me very great shock. If it were not your Excellency I would have said the attitude is one of callous disregard of duty, and that constitutional quibbles are out of place where the problem is one of saving lives of thousands.

Kind regards,

Yours sincerely,
N.N. Sircar.

1. Pictures referred to in the Document not printed.

109 Extracts from evidence by Mr M.A. Ispahani before the Famine Inquiry Commission on 1st December 1944

Nanavati Papers, List of Literatures. Item No. 2.b.2

[NAI]

Mr Ramamurty: How, do you know it has been reported to us — that the prices at which Bengal stock was sold to the Government differed from the prices paid by you to sellers at about the same date and the prices paid by the foodgrains Purchasing Officer at about the same time? And I wonder whether you could throw any light on how such differences arose. I will give you two or three instances which have been brought to our notice. They show that Patnai fine rice, 500 maunds, price per maund charged for the Cheda stock, Rs 33; price per maund paid by the Agent to sellers at about the same time Rs 27 and the price per maund paid by the Foodgrains Purchasing Officer at about the same time Rs 26. That is to say, you

charged the Bengal Government a higher price. Again Patnai rice, 762 maunds, price per maund charged for the Chetla stock Rs 31/8; and price per maund paid by the F.G.P.O. at about the same time, Rs 26 again, fine Kalma rice, 1000 maunds price per maund charged for the Chetla stock Rs 30/8; that is, the same quality at about the same time has been sold at different prices. Can you throw any light? Perhaps you have to examine them to give us a reply. Similarly, it has been reported that prices of rice of identical quality, purchased at the same place and on the same date often varied appreciably from one another. I will give you some instances. F.O.R. Jaynagar, date 30.6.43, quality medium, prices Rs 26/4 and Rs 27/8; F.O.R. Fatwa, 21.7.1943, medium Rs 25/8, 26/12, 27/8, 28/8, and 29/6; Sambalpur, 25.6.43 a medium, Rs 13, 16, and 17, they show a considerable difference. There also you will have to examine the details before you can reply? — Yes. It may be that Sauda might have been entered in the contract on one date and purchases might have been made three or four days hence. It requires detailed examination.

It has also been found that against purchase intimation memos marked 'Bengal' where the terms of purchase shown were 'Calcutta delivery', 'F.O.R. Shalimar', 'F.O.R. Chitpur', etc., the consignments had actually been booked from places like Forbesganj, Jogbani and Kishenganj in Bihar, and Sambalpur and Rihgali etc. in Orissa. It has been found that the prices charged by the Agent in such cases were often the prices prevailing in Bengal at the time which differed widely from those ruling in Bihar and Orissa. Have you got records of the sources of origin of those consignments? — We have got some from Calcutta merchants. The Bihar merchants were entitled to sell freely to anybody whom they liked during the free trade period and they must have given to my firm and we must have bought rice 'Delivery in Calcutta' and at the time, for rice 'Delivery in Calcutta' we looked only to Calcutta prices. They could have brought it from the Eastern States or Dinajpur or Bihar. Whatever the source of purchase was, as long as they gave us 'Delivery in Calcutta' and we saw that we bought them at Calcutta prices we were purchasing at those prices.

The object of the Bengal Government in having a big buyer like you was that it would have the advantage of your organisation in Bihar, Orissa and the Eastern States to purchase at local prices. Here, the Bihar and Orissa rice was being purchased by you in Calcutta at Calcutta prices, when the local prices were much lower? — Yes. But I did not know where this rice was coming from. This rice was sold from Calcutta merchants at Calcutta prices.

But supposing you knew where they came from? — Even if I did know from where it came, it was a question of securing quantity. If I did not buy that it does not mean that that man cannot go and sell to Shaw Wallace or Bird & Co., the Bengal Chamber of Commerce or the Indian Chamber of Commerce, he might have gone and sold in the market as he liked. I had received instructions from Government that we should buy whatever was available.

At any price? — At the best price.

Available where? — Everywhere — either in Calcutta or anywhere.

You did not think of sending your agents for buying in Bihar?

I had sent. But I could not corner those markets. Other merchants also wanted to enjoy the benefits of those markets.

When you sold to Bengal Government at those high prices, you were thereby helping to keep up the price level? — I did not do it from my own bat. I was instructed to make these purchases in Calcutta. I was told to make these purchases, I was asked to pay at the best price; and very often I referred these matters to the Controller of purchases and sometimes to the Director.

Are you aware that sum of Rs 46 lakhs being the value of 267,000 maunds, has been paid to you, though the stock has not yet been actually received by the Government? That is what the account have shown? — No. I challenge that.

Well, that is the result of our examination. You don't say it is a correct statement? — No.

You mean the 267,000 maunds have actually been received by the Government? — Yes.

The result of our examination was that a sum of Rs 46 lakhs being the values of 267,000 maunds has been paid to you but the stocks have not been actually delivered to the Government — They must be lying in Bihar and Orissa and must be coming in.

Mr Ramamurty: Was Mr Mirza Ali Akbar carrying on business of his own account in 1942-43? — Yes, on his own account.

Mr M. Afzal Hussain: What was the idea of your guaranteeing him? — Guaranteeing him in this manner that the Govt. of Bengal paid him money for purchasing under the denial scheme. Other agents had similar guarantees from bankers and friends. Similarly the Government wanted such a guarantee to be governed by a reputable firm on behalf of Mr Mirza Ali. So I guaranteed him.

You had no financial interest with him? — No.

Sir M. Nanavati: He was not working in your firm at any time? —

No. I have nothing to do with his business. As soon as the denial scheme came to operation we recommended him.

110: English translation — Extract of a memoir

Koyekti jiboni

(Some biographical sketches by Dr (Mrs) Maitreyee Bose, first published in 1977 in the monthly magazine of *Prabartak Sangh*; and reprinted (1978) in her volume of memoirs *Muktir Adhikarey*). *Muktir Adhikarey* by Dr Maitreyee Bose.¹ (Extracts)

'Towards the end of 1944 she [Mrs Vijaylakshmi Pandit] decided to found an organisation called 'All India save The Children Committee'. A few orphanages were established in Orissa, Kerala, and undivided Bengal. Dr Shyama Prosad Mookerjee convened a meeting in Calcutta University with Bengali leaders like Dr Bidhan Chandra Ray, Shri Nalini Ranjan Sarkar, Shri Jitendra Mohan Datta. By unanimous decision the heavy responsibility for this work was laid on me. Even today (1977) I am involved with it. . . . [I can illustrate by a few biographical sketches], what type of Children found shelter in these orphanages and how.

While patrolling the jungles in Arakan in 1943, the British troops found a girl child, about 2 to 2½ years old. They brought her and gave her over to our orphanage in Comilla. We named her 'Asha' (Hope). At that time she could not speak any word, let alone Bengali. She began to grow up and attached herself to a 12-13 years old boy of the orphanage called Suresh, calling him Dada (Elder brother). She did not display any special characteristics (except for a fondness for dried fish). But she blossomed out under the tender loving care of Suresh. . . . After partition we transferred the children of the Comilla orphanage to Barisha, and later to Thakurpukur — Asha and Suresh also came. There one lady fancied Asha as a match for her husband's younger brother. By this time Suresh was on the staff of the orphanage, earning a small wage. He helped in the arrangement of Asha's marriage, just as an elder

brother should. Later on Suresh had always come to Asha's side whenever she faced any problems after marriage. Two or three years ago, Asha's eldest son — a well fed child — visited Suresh, who brought him over to show me as if the boy has been visiting his maternal uncle's home. The waif found in the jungle of Arakan is today a housewife in a Bengali family in Nabadwip. Suresh De of Comilla, who had become a destitute as a result of the famine, is now a responsible worker in charge of our orphanage in Rajbandh (Burdwan District).

Badli lived at our erstwhile orphanage at Bankura which was established by Sijta Ashoka Gupta.¹ She later lived at Thakurpukur. A destitute, her marriage was arranged with Narayan. Now, Narayan is employed on the Lift Irrigation Scheme of the Govt. of West Bengal, which is located just outside the boundary of our Mangalganj orphanage. They live there too. At first, they had to live in a tent, now they have a house. They have acquired some land nearby and grow papaya, banana and different varieties of vegetables. When I go to visit the orphanage, I visit them also. Badli has passed through many tribulations; now she has a son by Caesarian Section.

Padma and Lakshmi were two sisters. Their widowed and impoverished mother lived at Shripur. The two sisters grew up, at Barisa and Thakurpukur. Our own worker, Pulin Mahapatra, who had established a centre at Midnapore asked for Padma's hand in marriage. Though Tilantapara was a remote village, none of their four children compare unfavourably in education with their urban-educated counterparts. Their eldest daughter Indira is a graduate student of English at Calcutta University. Her younger sister, Lakshmi is particularly good at studies. Having completed her primary education at Seba Village, she married her classmate, and one of our children, Ardhendu. Now she is herself a gram-sebika at Nadiya while Ardhendu works at the Gandhi Peace Foundation. The eldest of their 4 daughters is now studying for a B.A. at Victoria college, while living in its hostel.

Bhajahari Debnath is at present on the staff of our orphanage at Mangalganj (24-Parganas). During the famine of 1943, he had joined a Cargo-laden boat at Munshiganj ghat as a stowaway. Even though the boatmen discovered him mid-stream, they did not throw him overboard. Instead, they fed him and upon arriving at Bhola, put him in the custody of Sarajubala Sen, the senior member and superintendent of our orphanage there. Bhajahari, having secured some assistance, returned to Munshiganj in order to bring his younger sister Hasi to Bhola. Together, the brothers arranged for Hasi's marriage. The sister's family was very poor. From the meagre salary our orphanage paid him, Bhajahari, contributed towards ameliorating his sister's plight. By then, he had a family of his own as well. The Mangalganj orphanage however had substantial estates — due to the munificence of Sijta Sabitri Ansh, who'd donated 66-bighas of land complete with two beautiful old monuments. Bhajahari and his family live in a mud-house on a plot in this estate.

Narayan & Rabidas were two brothers. They were orphaned in their youth. Narayan, who was perhaps ten or twelve years old then, began to take on whatever domestic service he could, to feed himself and his brother. Ultimately, he arrived at orphanage at Thakurpukur and learnt the carpenter's trade.

¹ Translated from the original Bengali by the editor.

IX

Peasant Movement

The 131 documents which illustrate aspects of the nature of the peasant movement can be broadly classified into three groups. (They have not been arranged according to this classification, but chronologically as in the other chapters) Some of them, distributed between this chapter and Chapter I(A), record the spontaneous upsurge of the poorest of the peasants against landlords and imperial institutions which protected the landlord class. These were led by left-wing groups in the Congress (like the CSP in Bihar and the followers of Ranga in Madras) and the records illustrate setting fire to cutcheries containing landowners' records, the officials often reported that peons and tehsildars were reluctant to give evidence against suspected persons, either out of sympathy or fear of reprisals from the insurgents (Docs 20, 31). A stereotyped use of the word 'dacoit' in many district reports in Bihar really refer to Peasant rebels of this type (Chapter I(A), 135, reference to Siaram Singh). Many Kisan Workers who were members of the All-India Kisan Sabha (which was politically close to the C.P.I. at this time) had been swept up in the protest wave of the '42 movement (Docs 1-13) as the Kisan leader Sahajanand Saraswati admitted with regret. (No. 30 in Ch. I(A)). In Bengal similar evidence is to be found in the Midnapore district. (Ch. I(A). 141, 152), and as for Madras, in Doc. No. 56 we have the version of a Marathi C.S.P. worker about the frustrations and hopes of the peasantry in Madras who had felt cheated during the tenure of the Congress ministry in Madras. This observer was evidently in sympathy with Prof. N.G. Ranga's group and anti-Communist.

The second group of documents illustrate the institutional problems of the All-India Kisan Sabha, for long under the personal control of Swami Sahajanand Saraswati. The third group illustrate how the C.P.I. activists captured the Kisan Sabha and what fall-out this had on the organization's elder leadership and on the specific aspirations of the peasant community. Within the second group, attention is drawn to the chagrin of the Swami at the secession of the group in Andhra which followed the lead of Prof. N.G. Ranga (Docs 67, 73, 113, 117). Overlapping both groups is the evidence that the Andhra Communists moved into the vacuum created by the departure of the Rangaites from the All-India Sabha, and that the Swami sometimes felt irritated at what he considered to be the independent style of functioning of the peasant Communist leaders of Andhra; long accustomed to running the All-India Sabha with a centralized command structure, he was oversensitive to technical mistakes made by the new group who had taken charge of organizing the peasants of Andhra, so much so that the C.P.I. leaders P.C. Joshi and Bankim Mukherji had to intervene in the quarrel. (Docs 58, 59).

Before drawing attention to some of the other important documents in the third group, it is worth observing that the Swami had built up the Kisan Sabha mainly as the pressure group of one important class, and so his perspective was often coloured by class-specific economic grievances; Docs 7 and 11 in Chapter VIII and 29 in Chapter IX illustrates his views on government control and its policy on cash crops and how it affected the Kisans. A more revealing set of documents are those arising out of the Gur control order of the government in 1943, an order which impinged on the interests of consumers, sugar mill owners and peasants

growing sugar cane. The observation of the left wing A.I.C.C. member H.D. Malaviya' (Docs 53, 55) (Secy, U.P. Kisan Sabha) that the Swami could not see beyond the immediate interests of the Kisan on issues which affected other classes, and that it was desirable to have a broader perspective when the anti-fascist war also had to be fought were pertinent'. The ascendancy of the C.P.I. at this time was reflected in the Presidentship of the Sabha passing from Indulal Yagnik' to Bankim Mukherjee and the latter mediated in the sugar price question between the Government and the U.P. Kisan Sabha, and arbitrated between the latter and the Swami. Documents No. 49 and 52 also illustrate, in the context of the situation in Bihar, the tug-of-war between the 'economism' of the Swami and the political vision of the C.P.I.

The result of C.P.I. activity within the Kisan Sabha was to extend the membership base in Bengal, Punjab, Andhra and Orissa (Docs 18, 19, 50, 53, 54, 70); this also resulted in the C.P.I. newspaper *People's War* and its vernacular edition carrying news about Kisan Sabha activities (Doc. 23) and made the Swami discontinue issuing the A.I.K.S. bulletin (Doc. in Chapter V, Doc. 27). The Swami did not like the emergence of this parallel centre of power, was annoyed that, under C.P.I. influence, many branches were giving support to the 'Pakistan' idea (Doc. 38), and he was susceptible to the overtures of a pro-war splinter group of the C.P.I., the Bolshevik Party of India, which promised to support his authority in Bihar (Docs 57, 60). In April 1944, the peasants of Bengal, at the conference in Mymensingh, appealed to the Swami that, in the interests of the Bengal peasantry, and to counter the Muslim communal parties, the Kisan Sabha should not get identified with the Congress in sensitive political questions (Doc. 131). Doc. 81 shows that in Bihar the immediate effect was to aggravate tensions between the C.P.I. and the Swami. However, the pro-Communist elements in the Sabha pressed for a new constitution for the organisation aiming to give it a federal structure. The documents relating to the constitution sub-committee meetings and the draft prepared by the Bengali writer Gopal Halder' (Docs 96, 121, 124, 125, 126) show that behind the apparently pro-Pakistan stand of the C.P.I. there was a clarity of vision about the best way of harnessing the energies of the peasantry in the anti-imperial struggle. A Unitarian Constitution or a Federal one — this question had bedeviled the Indian nationalist movement in the nineteen-twenties culminating in the one-sided Unitarianism of the Nehru report of 1928. Echoes of the same controversies are to be seen in the Swami's opposition to, and the C.P.I.'s support to, introducing the federal concept in the constitution of the Sabha. The imperial polity, by introducing provincial autonomy, had already ensured that future pan-Indian constitutional negotiations should take place within a federal framework and the separatist Muslim League had been encouraged by the Raj. In such a situation hopes of mobilizing peasant class consciousness and directing it against the Raj and its allies in India required an organisation that recognized the wide variety of agrarian relations in India, and was capable of adapting tactics of struggle in specific local situations, within the long-term strategy of ending imperialism. This at least was the vision of one Pathan Kisan leader from the North West frontier Province (Doc. 125).

However, this vision could not materialize. The All India Kisan Sabha could not replace the All-India political parties as a political alternative in the struggle against imperialism. This was not only because the Swami was trying to keep his lines of communication with the Congress open (Doc. 128, 129, 130), but also because the C.P.I. itself still regarded Gandhi, Congress and the Muslim League as important elements in the Indian political scene, and was advocating their alliance (See Documents in Ch. V).

1 Harsh Deo Malaviya (Secy., U.P. Kisan Sabha) wrote an aide memoire on 'The Sugarcane Tangle' shortly

after August 1943, which he circulated to colleagues. An intercepted copy is in the archives of the Deputy Commissioner of Police, Special Branch, West Bengal, SK 511/44 (not printed).

Other Documents Relevant for this Chapter

1. IYP Papers in Chapter I(A) - Doc. 30.
2. IYP Papers in Chapter I(A) Doc. 41.
3. IYP Papers in Chapter V - Doc. 27.
4. IYP Papers in Chapter VIII - Doc. 7

1 AICC's Instructions (No. 7) to peasants (dt 13.9.1942)

File No. 3/19/43 - Home Poll (I)
[NAI]

All India Congress Committee

Instructions No. 7.

To Peasants

Mahatma Gandhi was arrested at 5 p.m. on August 9. Our struggle started from that hour. His arrest was a signal for all our countrymen to break open the gates of the vast prison that India is and declare themselves free men and take all consequences. The bulk of the Indian population lives in 700000 villages. Our rural folk therefore have the largest and most important part to play in this our last fight for freedom. During the month that has elapsed since the struggle started our peasantry has played a most heroic part and bravely borne the savage repression at the hands of the Government which we are out to destroy, root and branch. Let our peasantry now organise themselves on a wider scale. The struggle must deepen with every passing day. Gandhiji is watching us from inside the jail. Let us prove worthy of our beloved leader and his last message 'Do or Die'. Here are some instructions for you which you will carry out faithfully.

- (1) Declare yourselves free men and your village a free village.
- (2) Disown the British Raj; disobey the orders of all officials high or low in your village, tehsil or district.
- (3) Call upon the officials in your village, tehsil or district to resign and disown allegiance to the British Raj.
- (4) Establish a panchayat in your village. The panchayat will be your Governments. Carry out its orders promptly and faithfully.
- (5) Wherever you are well-organised, take peaceful possession of the ~~Thanas~~ ^{Thanas}, courts, and other Government buildings in your area. Those who resist your possession should be confined in suitable places. They shall be our prisoners and should be properly housed and properly fed.
- (6) Disobey the forest law.
- (7) Make salt wherever and in whatever manner you can.

- (8) Disorganise the communication whose sole use today is to suppress us. Take care that you take or injure no life.
- (9) Stop supply of grains, vegetables and building material etc to the military.
- (10) Do not allow the military or Government officials the use of your carts, and beasts of burden.
- (11) When the time comes, do not pay revenue to the Government. If you are living in a Zamindari area, pay the Zeminder his share only if he refuses all co-operation with Government and owes allegiance to the people.
- (12) Resolutely refuse to pay the punitive fine. Let this refusal be the united and collective act of your village or the group of villages on which the fine is imposed. You may take steps to see that your grain-stores do not fall into the hands of the police who would wish to attach them and other movable properties.
- (13) There is what amounts to Martial Law in several villages in many provinces. With the growth of the movement more villages will suffer a similar fate. It is the duty of the surrounding villages to see that they adopt all non-violent ways to prevent the police and the military from reaching the villages which they propose to occupy.
- (14) If in the villages under military occupation people find life intolerable, they may evacuate and temporarily settle down in other villages. Our village people will have to help one another in the trials and tribulations through which the country is passing.
- (15) Organise fraternity marches from village to village and carry the Congress message to every house and every hamlet.
- (16) The Congress message may be propagated through songs and slogans. Let the younger people learn good patriotic songs and sing them at meetings and processions. Our slogans should be (a) Quit India (b) Do or Die (c) Victory or Death (d) Mahatma Gandhi Ki Jai etc.
- (17) Wherever possible fraternise with the police and the military. Remember that they have to be brought over to our side by persuasion and non-violent suffering.
- (18) Let our brave Women-folk in the villages come forward and take their proper share in the fight. Let it fall to their lot to energise the people by their open and active participation in the struggle.
- (19) It is open to the people to institute social boycott of the officials who do not carry out the will of the people.
- (20) Do not accept paper notes.
- (21) Let us not forget that Gandhiji is our Leader and he has enjoined on us non-violence under all circumstances. The greater our adherence to non-violence the quicker will be our success. What we do we should take care that we take no life.

The carrying out of these instructions will inevitably involve serious sufferings and hardships for our people. Already during this one month of the struggle our people have undergone untold sufferings at the hands of these from whom we seek deliverance. Let us not relent or relax but carry on the good fight till victory is ours.



2. AICC Circular (No. 8) to peasants (September 1942)

File No. 3/19/43 - Home Poll (I)

[NAI]

Vandematram

Circular No. 8 (Bihar)

Be free or die.

Read and circulate.

Since all the leaders have been arrested and the remaining workers too are likely to be put in jail people should give up the hope of receiving instructions from anybody and every one should undertake to run the movement *suo moto*. The whole programme has already been briefly explained in previous circulars. According to necessity additions can be made to the said programme. Only one thing should be borne in mind namely, violence should not be resorted to or any other thing done which is ordinarily considered bad, such as theft, dacoity or any other act which militates against morality and religion. Keeping these two things before them people are free to do anything provided the act done impedes the administration of the Government and makes it paralysed. The method to be followed should be such as may indicate that Government does not exist and that the people have to manage things themselves. Therefore, on the one hand they should see that nothing that they do helps the administration of the Government and on the other hand they should do all those things which may tend to promote unity amongst people, ensure the safety of their life and property and remove the problem of food scarcity so that they may combine to face the oppression of the Government fearlessly. It is necessary to follow the following instructions:

- (A) No body should purchase or read any newspaper. All the nationalist newspapers have suspended publication. Those that are issuing through them the Government wants to elude the people by giving publicity to false news and it also wants to terrorise them and shake their courage. It is, therefore, a sin to read such newspapers.
- (B) Further the Government is very cleverly carrying on oral propaganda that whatever has been or is being done so far is detrimental only to the people & that the Government work is going on as usual. People should be careful about such propaganda which is meant to cause civil war. They should try to understand that if these acts are harmful only to the public then why should the Government employ its entire strength and utilise the troops collected in connection with the war, to repair Railway and telegraph lines? The fact is that the whole administration of the Government has come to a stand still. It cannot convey orders to its officers stationed at district headquarters or in the interior. Aeroplanes can not go everywhere. And then the despatch of war materials from one place to another which has led to a deadlock in the transport of rice, pulse, fuel, coal, salt etc. for general consumption, has now been completely stopped and this has caused more worry to the Government than to the public. As for the masses they can even

travel on foot. The Government has not built Railways or roads for their benefit. It builds Railways or roads for the transport of Government officials and troops from one place to the other. Where are Railways, and roads to be found in villages? Again crores of Indians have always remained half fed. Even before the beginning of the movement there were many persons who could not get grains, salt, fuel and other such things. They will, therefore, be able to anyhow bear these difficulties for a couple of months, but how will Government officials and troops carry on who consume eggs, butter and loaf only? They will have to face ruin in a couple of months. The movement, therefore, should not be slackened on the plea that it is harmful to the public.

- (C) The Government has encouraged oppressions on the masses in villages with a view to terrorizing them. If people get frightened then they are gone because it is not the real persons who are victimised but in most cases innocent persons are victims. In Patna even high Government officers such as doctors, teachers, etc. were assaulted. It is, therefore, wrong to think that people will be saved if they remain quiet and do nothing. The persons who try to run away are assaulted most and the persons who remained firm strikes terror even in the enemy and checks the fury of the oppression if not end it altogether. Therefore, wherever Govt. troops or policeman go people of the place must stand firm. If people of the neighbouring villages collect and boldly say that they refuse to be scared away or allow their houses to be searched or the honour of their ladies to be impaired then it is sure that the people of the place will be saved from oppression and ruin, although a few persons may be killed. If the villages do not stand firm and if people of the neighbouring villages do not combine to put up a united front then it is certain that the white troops or the policemen will raid each village and each house, loot the properties, assault and arrest persons and it will not be a wonder if they dishonour the ladies also. Therefore, general welfare lies in abandoning fear and plucking courage and this will lessen the degree of loss to life and property. Those who shoot unarmed men are cowards at heart and run away out of fear when resisted.
- (D) If the property, cattle, or land of any person is attached and put on auction then nobody should purchase.
- (E) Panchayats should be established in every village to arrange for the protection of the village, settle disputes, check litigation and provide food for the poor and the hungry. The Government will try to win over the poor and the hungry and tempt them and set them against others. It is the old policy of the Government to divide people by temptation. Perhaps it is not known to the people that the Government is distributing to the Railway employees, free of cost, all those articles belonging to traders, which are, at present stranded on stations here and there. This is just a bribe not to strike work. But it should be remembered that as soon as peace is restored Government will stop such free distributions and it will not be surprising if prices are deducted from their pay later. Therefore, everyone should be very careful in these matters and should not be blind to duty out of any temptation.
- (F) Various reports will be followed by the Government to the effect that peace has been resorted everywhere with a view to discouraging the masses. But such reports should not be relied upon and people should do their bit thinking that others in other parts are doing the same.
- (G) News should be conveyed orally and instructions given publicly. If necessary notices be issued to facilitate quick despatch of news or directions.

3: AICC's Instruction (No. 11) to peasants (dt 27.11.1942)

File No. 3/19/43 - Home Poll (I)

[NAI]

Instructions No. 11.

All-India Congress Committee

No-Tax: No-Rent: No-Grain Campaign

During the last three months the Indian people have risen to new heights of resistance of the usurper authority. While the towns were the first to flare up into flames, it was inevitable that they should be overpowered with superior military force. But the most heartening feature of our revolution is the spontaneous extension of our field of action from the towns into the countryside. It is not easy to paralyse the civil administration in the towns for any considerable length of time, mainly because civil administration can stand on the support of bayonets and machine guns. Besides industrial general strike is the core of urban resistance. If it is not possible to maintain such a general strike urban resistance is bound to collapse. The spirit of revolt can however, be kept alive by a continuous programme of specific defiance.

2. In the rural areas civil administration is not backed by the same overpowering superiority of military and police force. Therefore in the first month or two rural India brought the apparatus of civil administration to a stand still. The war on communications, (railroads, telegraph and motor roads) prevented the enemy from concentrating his military might and distances became, the strongest weapon of the revolution. This phase of the struggle lasted for over two months and even today resistance is spreading to newer areas where civil administration has been rendered ineffective. This situation is, however, not as extensive as it should be. Bihar and Eastern U.P. were the first to lead the way. It is only now that gradually the spirit and technique of this revolt are spreading all over India. But it has brought the full fury of police and military violence on those areas which had completely over-thrown the usurper authority. A period of military reconquest ushered in the worst excesses to *(sic)* history. Looting and burning of villages, rape and rapine on a mass scale, machine-gunning and even aerial attacks with such weapons the gangster requires tried to strike terror and to break the spirit of revolt. There is no doubt that these indiscriminate and ruthless atrocities are a sign of weakness. It is the last resort of a collapsing authority.

Unfortunately the primary impulse of revolt could not be extended continuously from one district to another, or from one province to the next. The rural areas were thrown on the defensive. Repression could not break the iron will of our leading cadres. But the spontaneous up-surge of entire village was suppressed for the time being.

(On the other hand the inhuman barbarity of British authority has widened the gulf between the people and the agents of this regime. Today there is a conscious hatred of the foreign rulers where before there was a vague groping for a way out of existing hardships. But all the same over wide areas it is not immediately practicable to launch another offensive against this regime, based on a spontaneous mass action of the people as a whole. The core of resistance is still unbroken but a reorganisation of our forces has become necessary; such a reorganisation

is the essential preliminary to renewed assault which would bring civil administration to an end and render the tax collecting agency ineffective . . . This task devolves upon: (a) Those remained free, (b) those students who have left their colleges and schools and who have taken up the leadership of rural revolt, (c) those newer elements from among the rural and urban workers who have been fired into activity by the events of the last three months and (d) those adventurous elements who have found a new-worth-whileness in this struggle; all these forces must combine to tackle the tasks of reorganisation for a fresh offensive.

Our ranks have been depleted; our resources, in the form of local assistance in rural areas, and active enthusiastic support from village young men have been reduced by repression. With such resources as we have we can yet set ourselves the task of rekindling this fire on a more extensive scale. The time for tax collection is approaching and the business of administration will be extended on a scale which cannot be supported by threats of military and police action at all points.

March and roundabout months of 1943 will almost decide the fate of the Indian Revolution. It is during this period that the usurper Government will collect its land tax throughout the country. If this can be made an occasion for mass-defiance, by a general programme of non-payment we will have solved the problem of co-ordination and simultaneous action in all the provinces and districts of the country.

Land-tax is important to the usurpers not only for the income that it yields but much more so for its administrative value. On land-tax alone hinges the rural administration of the British in India with its revenue officers and law courts and police stations. In resisting the land-tax we must therefore be clear about its revolutionary value. We must plan to go beyond our former no-tax campaigns. In former campaigns, the peasantry merely refused to pay the tax willingly, but permitted the revenue officers and the police to attach lands and other property. This must not happen. It must be a total resistance. The peasantry must obstruct the revenue and police officers to collect the tax, in fact to enter the village, unless in the form of a military invasion. Even this can be temporarily rendered ineffective by flight into the jungles until the invaders are forced to retire. They can be harassed in the meantime by cutting their communications and supplies. This can be done and instructions will tell you how.

- (1) We must start with a campaign for the non-sale of food-crops and cattle. It is in the interest of the people themselves that they should ensure an year's stock of food, when communications are so undependable and when the food-prices are so unsteady due to the worthlessness of the paper currency.
- (2) Convert all cash into goods. Paper money is a fraud; it will starve the peasant as well as other classes. Put no faith in the illusion of well-being created by the currency notes.
- (3) In Rayatwari areas there is a straight tie between the Govt. and the peasantry. In the Zamindari areas however the question of the landlord does crop up.

The landlord should be paid by mutual agreement a small part of the rent which will enable him to maintain his family. An informal understanding with his tenants will be able to secure for the landlord his reasonable requirements.

It must however be made clear that the Zamindar must give a preliminary undertaking not to pay tax to the Government before the tenants can agree to accept the responsibility of maintaining his family. Any attempt on the part of the landlord to bend before the British power will be sufficient cause for the tenants to withhold all payment by way of rent.

The A.I.C.C. has declared a moratorium on agricultural debts and interests. Arrangements should however be made between creditors and debtors for such payments as will enable the creditor and his family to meet their reasonable requirements of food etc.

Communications should be continuously cut, young men of the village should cut wires from now on as a preliminary training. All the time tax-collecting is actually attempted communications should be so thoroughly put out of action that movements of police and military are rendered very slow and difficult.

Who would form the Swaraj Panchayats, who would cut the communications, who would bring about and maintain the unity among villagers? The most satisfactory answer would be, the villagers themselves, without outside assistance. Just give them the idea. But even to do this, we need a fairly large number of active propagandists and organizers. These should in the first instance be recruited from:

- (a) Such Congress and other political workers as are still out and active.
- (b) Students and teachers.
- (c) Strikers and dismissed workers from factories.
- (d) Workers of social welfare institutions.
- (e) The better type Sadhus and Fakirs.

The directorate of each Congress province should immediately appoint a man in charge of the campaigns to resist land-tax and for the non-sale of food-crops. His task should be to meet at once, through a deputy if necessary, the active elements of the five groups mentioned in each district and to enthuse them with the basic idea of these instructions and to coach them upon the general line of propagandist and organisational activity.

Propaganda

The main lines of propaganda in the villages should be:

- (a) *Political:* Since the 9th of August and the arrest of Gandhiji and others, the British are declared usurpers. To pay land-tax to them is sin, Mother India, Gandhiji, the Congress religion and all that one prizes forbid the peasantry to pay land tax.
- (b) *Currency - Collapse:* Sale of crops or cattle for paper notes is a big gamble. Already paper notes are unable to buy even one-third of what they formerly used to and they may soon become almost valueless. The British Government is today existing on the printing of paper-notes without gold or silver or other valuables. Therefore convert your savings into goods instead of cash.
- (c) *Danger of Food and Cloth Famines:* The British Military in and out of India is using up our crops and cattle and railways and cloth. War and aerial bombing of cities has come on our eastern frontier. All this will lead to food and cloth famine. Therefore, to sell crops or cattle today is to prepare for suicide tomorrow.
- (d) *Organisation:* Is the question. Form Swaraj Panchayat, arrange for barter inside the village and between one village and another. Develop handicrafts, particularly spinning and weaving. Have no dealings with anti-national revenue or police officers. Create unity in the village itself and among groups of villages.
- (e) *Break-up of communications:* If roads and telegraphs and railways are put out of action or destroyed throughout the country, the British military will be defeated and India will be free and the peasantry will prosper.

Emphasise these five points in your propaganda. Tell the peasantry that to sell crops or cattle or to pay land-tax is sin, gamble and suicide.

Note: Attempt should be made to reach the appended appeals of the A.I.C.C. to (1) The Peasants of India¹ (2) The landlords (3) The Money Lenders (4) Revenue and police officers in the villages. These appeals should be spread as they are for the sake of uniformity of propaganda and because of the weight that the name of the A.I.C.C. would carry. Further appeals must be drafted on the general lines indicated by the provinces and the Districts themselves.

27.11.1942.

1. Doc.4

4: AICC'S Instructions (No. 12) to peasants (dt 30.12.1942)

File No. 3/19/43 - Home Poll (I)

[NAI]

To the Peasants of India No-Tax; No-Rent; and No-Grain Campaign

We know that the heaviest burdens of the struggle the country has been engaged in during the last four months have fallen on you. You have borne these burdens with a courage and fortitude that have won the admiration of the world. The common passion for freedom-political and economic-united you, the 360 million peasants of India and without arms you fought a wily and well armed foe. You invited grievous suffering on yourselves but you have the solid satisfaction that you inflicted equally grievous damage on the machinery of administration which is grinding out for your tyranny and misery day after day. We have reached the frontiers of Freedom but we have yet another and perhaps more terrible ordeal to go through before we are in actual possession of it. Do not forget the little message your great Leader had left you; 'Do or Die'. Let not the occasional setbacks in the struggle depress you. The country is resolved to carry on the struggle till death or victory.

The no-rent no-tax and no-grain campaign will soon be upon you if it is not upon you already. This campaign will be your and our test. Resolve individually and collectively that under no circumstances you will pay rent or tax or part with grains to the agents of the usurper Raj.

Here are a few directions for you:

1. Do not pay land-tax.
2. Do not allow the usurper administration to attach your land and other property. Resist all attachments.
3. Adopt all legitimate ways of preventing the entry of the police and revenue officers into your village.
4. Do not sell grains, stock them for use in the difficult and uncertain months ahead.
5. Do not let grains fall into the hands of the police. Keep them where they cannot find them.

6. Do not keep paper money with you. It is a fraud. Soon it will lose all value and buy nothing. Convert paper money into goods while there is yet time.
7. Do not accept currency notes.
8. Pay the landlord who is with you just enough rent to maintain himself and his family. Pay nothing to the landlord who is an ally of the Government.
9. You are perfectly within your right to put out of action the system of communication, whether roads or railways or postal and telegraphic services – through which the police and the military and civil officials maintain their strangle-hold on you.

5 Secret circular issued by the War Council – U.P. Congress (dt 31.12.1942)

File No. 3/19/43 – Home Poll (I)
[NAI]

Gist of a secret circular in Hindi. issued by the Organiser, War Council. U.P. Congress.

For Congress Workers only.

The progress of the Independence Struggle is satisfactory, but we shall have to further intensify it, so that freedom is achieved.

The recent statements of Messrs Churchill and Amery have clearly shown that they are determined to keep their rule in India intact and not to part with power to Indians. We have to sacrifice our all to achieve our objective.

The Chinese are not so well armed and equipped as the Japanese are, but their spirit of self-sacrifice has enabled them to withstand the Japanese aggression so long.

There are two ways for achieving freedom. One is the nonviolent way of demonstrations and propaganda regarding non-recognition of British rule and authority in India. On 9th. and 23rd. of every month, there should be prabhat-pheris and processions and meetings to court arrest. The other is the Destructive programme. Those who participate in it should be prepared to sacrifice their lives.

There should be a map in each district showing:

- (a) Kacha and pucca roads, railway stations with their distances from one another, railway bridges and culverts whether patrolled by police guards or not,
- (b) Petrol and kerosine installations, showing the quality and protective measures, if any,
- (c) Aerodrome and Govt. Grain stores, Cantonments, War Production Centres, with notes showing the nature of the material prepared.
- (d) Hydro-electric stations and places where the Hydro-electric wires cross the telephone and telegraph wires.
- (e) Police stations and post-offices, showing the total strength of the force and the number of arms and ammunitions kept, and the distance from headquarters.
- (f) Lists of persons having arms and the number of arms.
- (g) Lists of persons who either for self-interest or for helping the British Govt. oppose Congress workers at the time of necessity.

- (i) List of absconding Congress workers and details of their work. Touch should be maintained with them.

Those underground Congressmen who are not wanted in any heinous crime and who do not do any useful work should court arrest by making some demonstration. Those unwilling to go to jail should obtain permission from the provincial Organiser, through their district organisers. Those failing to comply should be expelled from the Congress or disciplinary action should be taken against them in future.

Programme

Freedom is to be achieved independently of the Japanese or German help and without waiting for their invasion of the country. All Imperialists and Fascists are the same so far as India is concerned.

The main aim is to impede the war effort and paralyse the administrative machinery of the Govt. without causing loss of life. There is no place for individual violence in their struggle for freedom.

- (1) Cutting of wires should be continued as it involves immense loss to the Govt. Insulators on tops of poles should be destroyed, as they are not easily available these days. Pieces of wires cut should be thrown away so that they might not be found for repairs.
- (2) Other items of the destructive programme should be ascertained from the District Organisers.
- (3) Transport of war material should be hindered as far as practicable.
- (4) The credit of British Govt. has almost disappeared in India, as gold and silver have been taken to England and there is shortage of copper coins as well. Paper currency is in full swing. The villagers should be advised verbally and through leaflets not to send their grain to market, as grain is being sent out of India for military purposes, and is also stored in Cantonments for emergency purposes. So, the villagers should stock their grain till next harvest, otherwise they may have to starve, owing to scarcity of corn. Carts carrying grain to the market should be stopped, if they do not listen to the advice given.
- (5) The destruction of Govt. records and papers is beneficial to the tenants.
- (6) Cattle should not be allowed to be sold for military needs.

Detailed instructions have been given regarding the qualities and characteristics of workers required for carrying out the destructive programme. Emphasis has been laid on keeping discipline, maintaining secrecy regarding identity of workers, and readiness to make all sacrifices.



6: Police report of a meeting of the Kisan Sabha

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

II. (viii) Kisan Sabha and other Peasant Groups. A report dt 8-1-43

1. A.I.K.S. — The Bombay C.I.D. reports in its Abstract of Intelligence, dated 3rd October, that a private meeting of the Central Kisan Council was held at Bombay on 24th to 26th September under the presidentship of Indulal K. Yagnik. About 20 persons including Swami Sahajanand, S.V. Parulekar, D.M. Pangarkar, Chandrabhai Bhat, Jamaluddin Bukhari, Miss Shanta Bhalariao and S.H. Jhabwalla attended. The meeting reviewed the political situation on the country and passed a very comprehensive resolution demanding the release of M.K. Gandhi and other Congress leaders and the formation of a provincial National Government to fight the Axis menace. It deplored the prevalence of mob violence and appealed to the Kisans and the people to turn from the path of sabotage and terrorist activities which lead not to the weakening of the bureaucracy but to the ruin of their own people, in as much as they evoke bloody reprisals, undermine internal security and national defence and create condition of anarchy and disruption which are being taken advantage of by 'Fifth Column' agents for their nefarious ends. The meeting also opined that the recent speeches of Mr Churchill and Mr Amery had aggravated the situation and the eternal bogey of communal disunity was being used as an excuse to withhold the transfer of power. The Central Kisan Council further decided to carry on a campaign among Kisans and the people explaining the resolution, to demand the release of M.K. Gandhi and the Congress leaders, to support the National demand and to foil the Government attempt to form an anti-Congress or anti-National Bloc. The Council would also endeavour for the restoration of peace in the rural area and the isolation of saboteurs and promoters of anarchy.

7: English translation of a post card from Shyamaprasanna from Calcutta to Sachin Ghosh, C.P.I. office, Rangpur (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 533/43
[Bengal State Archives]

Bengal Provincial Krishak Sabha,
249, Bow Bazar Street, Calcutta 26.4.43

Dear Comrade,

We received your letter duly and got your telegram last night. Just on receipt of your letter we have intimated Mymensingh District to elect Comrade Mani Krishna Sen (1) as the President

in accordance with your proposal and asked them to write to comrade Mani Krishna Sen about it.

We thought that you would know everything from the letter to comrade Mani Krishan Sen from Mymensingh. However, it would have been better to inform you about all the facts on receipt of your letter. That would save you from anxiety. We have committed a mistake here. Lal Salam.

Shyamaiprasanna (2)

Superscription

Com. Sachin Ghosh (3)

Communist Party Office, Rangpur town,

Post Mark — Calcutta, 26 Jan. 43.

8. Secretary, CPI office Lahore to Bengal Provincial Kisan Sabha (BPKS) -- (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

A.I.K.S

27.1.43

In a letter dated 20-1-43 (intercepted) from General Secretary, Reception Committee, C.P.I. Headquarters, 114 Meclod Street, Lahore to the B.P.K.S., 219 Bowbazar Street, the writer intimates that the seventh Annual session will be held between 2-4-43 and 4-4-43 at Ehakhns, the native village of Sahan Singh (detained in Gujrat jail). A provisional Reception Committee has been formed. About 40 squads are moving about in the villages to collect funds. Other preparations are afoot. The provincial branch of the F.S.U.¹ is arranging for an exhibition displaying Soviet Industry, agriculture, education, culture and art. Modern agricultural implements will also be displayed.

In an enclosed letter, the writer Jagjit Singh invited suggestions and requests the addressees to make the necessary propaganda for the conference. He adds that the Reception Committee will provide the delegates with board and lodging.

Friends of the Soviet Union



9: Sudhir Mukharji to Sachin Ghosh (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 533/43
[Bengal State Archives]

English translation of a Bengali letter dated 30-1-43 from Sudhir Mukharji, Calcutta to Sachin Ghosh, Rangpur.

*249, Bow Bazar Street, Calcutta
30-1-43*

Dear Comrade,

The Provincial Committee hopes that the Rangpur comrades will be able to fulfil the quota of 40000 members within March next.

From the political point of view also, it is absolutely necessary. Com. Rasul' too expects much from Rangpur in this matter. I think the Rangpur Committee can make it possible. Please convey to all the comrades this demand of the P.C. and ask them to fulfil the quota, Lal Salam.

Sudhir Mukharji

Secy Rangpur D.K.S.

Dear Comrade,

The Provincial Kisan Sabha hopes that you will be able to fulfill the quota of 40000 members within March next. It is also the wishes of the Provincial Kisan Sabha that in the unity movement, Rangpur will be the ideal of the whole of India in discharging its duties in the political matters of the Kisan Sabha. Make all the Union Krishak Samities conscious of this matter. Lal Salam.

Sudhir Mukharji

Postal seal — dated R.M.S. dated 30-1-43

Superscription.

Com. Sachin Ghosh (5),

Secy. Rangpur Dist. Committee,

Communist party office the, P.O. Rangpur



10: English translation of a post card written in Bengali (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

Bengal Provincial Krishak Sabha,
249, Bow Bazar Street, Calcutta 1.2.43

Dear Comrade,

As directed by the Provincial Office, the new District Krishak Samiti is to be formed within the 15th February next, because it is only the new district Krishak Samiti which has got the privilege to nominate delegates for the next session of the All India Kisan Sabha. If you do not get permission for the rally within this time, please hold it later. The number of delegates of your district is 68 out of 285 for the All India Conference. For this reason, the importance of your district is greater. Your new District Samiti is to be formed within 15th without fail, in order to nominate all these delegates within the 20th February. Lal Salam.

Signed
Shyama Prasanna, (1)
Office Secretary

Superscription,
Secretary,
Rangpur District Krishak Samiti, Rangpur,
Post Kark Calcutta dated 1-2-43

(1) Identical with Shyama Prasanna Bhattacharji, Office Secretary, B.P.K.S., 249, Bow Bazar Street, Calcutta.

11: Swami Sahajanand to P.C. Joshi (dt 29.1.1943) (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

Superintendent of Police, Rangpur
Peasant 2-2-43.

Memo No. 2158/62 S.B.

SECRET
Bihar Special Branch
Patna, the 2nd February. 1943.

Extracts from an intercepted letter dated 29.1.43 from Swami Sahajanand Saraswati P.O. Bihta, Patna to P.C. Joshi, *People's War*, 190, B.R.K. Buildings, Khetwadi main Road, Bombay - 4.

Dear Joshi,

Your letter of the 24th reaches me. Thanks. Personally I have no reason to disregard the claim of Bankim (Mukherji). I think Indulal too thinks like this. I gathered this from his letter to me more than a month back. So he too may be agreeable to this proposal. No doubt he has in his mind Pundit Jadunandan Sharma too but not necessarily for this year I think. So please do not try to either meet him or be in communication with him and I believe it will become a settled fact. I have already written a letter to him asking his final opinion. So there is no further need of my writing in this connection. It is not proper for the General Secretary to write to these P.K.S. comrades in this connection and there is no need. Please arrange everything after having consulted Indulalji. I shall ever be with you if his consent is obtained which is sure, if I am right.

[Forwarded to G.C. Ryan, Esqr., I.P. Asst. Director 'R' I.B. New Delhi H.E. Bruce, Esqr., M.C., I.P., C.I.O. Bihar, Rai Bahadur P.K. Biswas I.P., Spl. Supdt. of Police, I.B., Bengal.

B.H. Taylor, Esqr., I.P., Commr. of Police, S.B. Bombay.

P.H.G. Bridgman., I.P., S.P., (B) Punjab, C.I.D. for information.]

The Secrecy of the interception may please be maintained.

J.P.W. Jonnston, 2.2.
Special Assistant to the
Dy. Insp. Genl. of Police,
C.I.D. Bihar

Intelligence Branch, C.I.D.
13, Lord Sinha Road,
Calcutta, the February, 1943
No. 33556 53/39 (1) Comm.

Copy forwarded to Raj J.B. Bhattacharji Bahadur, J.P., Deputy Commissioner of Police (II), Special Branch, Calcutta, for information.

Signed
Special Superintendent of Police, I.B.



12: Letter to Indulal Yagnik from Abdullah Rasul (dt 4.2.1943) (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

Peasants – 6-2-43

44. A.I.K.S.

In continuation of January para. 153: In a letter dated 4-2-43 (intercepted) to Indulal Yagnik, President, C/o Gujarat Provincial, K.S. Prarthana Samaj, Astodia Road, Ahmedabad from *M.A. Rasul* of 249 Bow Bazar Street, the writer states that the Kisan Sabha workers here are of opinion that Bankim Mukharji who had been a vice-president for more than one term, deserves the honour of being elected the next President of the A.I.K.S. While Swamiji and the addressee have been given due recognition, Bankim and Muzaffar have not so far received it. Muzaffar has, however, been less intimate of late with the A.I.K.S. Swamiji is in favour of Bankim's election. The writer expects the addressee also to be in full agreement with him and thinks that the kisan Sabha workers of other provinces may not disagree in the matter. He adds that he had hitherto been engaged in the cyclone relief affair. He will shortly leave for some district in East Bengal and attend the district Kisan Conferences which will all be over by the 15th instant.

13 Members enrolled for A.I.K.S.-List (intercepted)

Govt. of Bengal, Office of the D.C.P. (Sp Br.) File No. SK 511/43
[Bengal State Archives]

8.2.43

52. All India Kisan Sabha

In continuation of para 44: the Provincial lists of primary members enrolled this year, money quota, number of delegates etc., have been circularised by Swami Sahajanand Saraswati, General Secretary, Bihta, Patna.

The Provinces have been asked to send the names of their respective nominees for presidentship to the General Office by 28-2-43.

A.I.K.S. Membership Etc

| <i>S. No.</i> | <i>Province</i> | <i>Population</i> | <i>Primary members</i> | <i>Money quota</i> | | | <i>Delegates</i> | <i>AIKC members</i> |
|---------------|------------------|---------------------|------------------------|--------------------|-----------|----------|------------------|---------------------|
| 1. | Bengal | 6,24,56,000 | 83,160 | 433 | 2 | 0 | 285 | 29 |
| 2. | Punjab | 3,49,22,000 | 56,004 | 291 | 11 | 0 | 176 | 18 |
| 3. | Andhra | 1,87,94,500 | 55,560 | 289 | 06 | 0 | 107 | 11 |
| 4. | Bihar | 3,63,40,000 | 27,168 | 141 | 08 | 0 | 113 | 12 |
| 5. | U.P. | 5,59,49,000 | 12,096 | 63 | 00 | 0 | 60 | 6 |
| 6. | Surma Valley | 29,59,052 | 11,520 | 60 | 00 | 0 | 18 | 2 |
| 7. | Kerala | 1,29,49,000 | 11,199 | 58 | 05 | 3 | 44 | 5 |
| 8. | Maharashtra | 1,60,00,000 | 9,996 | 52 | 01 | 0 | 44 | 5 |
| 9. | Gujarat | 23,57,000 | 4,636 | 24 | 02 | 0 | 12 | 2 |
| 10. | Utkal | 1,17,54,000 | 4,224 | 22 | 00 | 0 | 21 | 3 |
| 11. | Vidarbha (Bihar) | 36,20,000 | 2,448 | 12 | 12 | 0 | 10 | 1 |
| 12. | Sind | 45,37,000 | 2,004 | 10 | 07 | 0 | 10 | 1 |
| 13. | Assam Valley | 70,73,908 | 1,008 | 5 | 4 | 0 | 6 | 1 |
| 14. | Gwalior State | 39,92,000 | 960 | 5 | 0 | 0 | 4 | 1 |
| | Total | 30,49,61,960 | 2,81,983 | 12,468 | 10 | 7 | 910 | 97 |

NB Population figures include, in some of the provinces, state populations also. But they are only approximate for Maharashtra and Gujarat and not exact.

Addresses of Provincial Kisan Sabhas

1. Bengal – 249, Bowbazar Street, Calcutta
2. Punjab – 114m, McLeod Road, Lahore
3. Andhra – Governorpet, Bezwada
4. Bihar – Kadamkuan, Bankipur, Patna
5. U.P. – 7 Bisheshwar Nath Road, Lucknow
6. Surma Valley – Zindabazar, Sylhet (A.P. Ry.)
7. Kerala – All Kerala Kisan Sangham, Bank Road, Calicut
8. Maharashtra – Rambag, Kalyan (GIP Ry.)
9. Gujarat – Dabhan Bhogal, Nadiad
10. Utkal – PO Chandhi Chauk, Cuttack
11. Berar (Vidarbha) – Amraoti (Berar)
12. Sind – Sind Hari Sabha, C/o Syt. Banaram Kirpaldas, Advocate, Sukkur (Sind).
13. Assam Valley – C/o Syt. Khageswar Tamuly, Pleader, Golaghat
14. Gwalior State – PC Nagda, BPCI Ry.

NB : Addresses of NWFP and Tamil Nad are given in the report.

Swami Sahajanand Saraswati
General Secretary
AIKS

14: Extracts from Fortnightly Report from Baroda & Gujarat states for the period ending 15th February 1943

Baroda and Gujarat State Agency File No. 6(10)-P(S)/43
[NAI]

Mr Indulal Yagnik, a prominent Kisan Worker accompanied by one Shri Shankar Jani arrived in Mehsana on 1st February 1943. They visited Sidhpur, Patna and other places with a view to organise Kisan Sabhas. It is reported that they met little response either at Meshsana or at Sidhpur.

15: Indulal Yagnik to Abdul Rasul (dt 14.2.1943) (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 533/43
[Bengal State Archives]

Re. Interception at Bowbazar on 17.2.43

P.O. — Copy of an English letter dated 14.2.43.

From. Indulal Yagnik to Abdul Rasul.
249 Bowbazar Street — Cal.

Camp. Nadiah

Dear Rasulbhai.

Glad to have your letter of 4th inst. I hasten to state in reply that I have on my own initiative suggested Bankim's name to Swamiji and then to Bukhari. So you see I am already at one with you and the Gujarat delegates will very shortly recommend Big Bankim for Presidential Gadi. . . .

Hoping to meet you and other comrades at the annual session.

Yours,
Indulal



16: General Secretary, AIKS to provincial secretaries organisational reportage no. 3, 1942-43, dated 23.2.1943, (extracts) provincewise survey of the effective strength of the AIKS

Indulal Yagnik Papers - File No. 22
[NMML]

Provincial Sabhas. Bihta, Patna

Elsewhere are given the full addresses of our provincial sabhas¹ that are working more or less in an organised way and functioning regularly. In addition to Tamil Kisan Sabha whose present address is '2, Jones Lane, Broadway, Madras', and which has not been able so far to remit its money quota to this office, and the N.W.F. Kisan Sabha, whose office is at Kohat and which, as stated earlier, stands suspended, at least for the time being, there are, in all fourteen Provincial Kisan Sabhas, including the Gwalior State Kisan Sabha, that have regular communication with the Head office. It is only this year that the Sind Provincial Hari Sabha has really begun to function, thanks to the efforts of Com. J. Bukhari, who deserves our special greetings for it. So far it was a mere name. Com. J. Bukhari has also submitted a short retrospective report on the Hari struggles and problems in the past and present it is an excellent reading. In Assam Valley too, as a combined result of the efforts of Comrades Mansur Habib, our Joint Secy. Bengal, and Lala Sardendu Dey, Surma Valley, who both were entrusted with this work by the C.K.C. Bihta, a provincial Sabha has come into function. As regards Mahakoshal Sabha, it has not functioned once and really existed so far and it is indeed a slur on us. Similarly is the case of the C.P. Marathi Sabha. It exists with one man, Com. P.D. Marathe of Nagpur. Consequently it has ceased with his arrest. This too is a shameful thing for us all who loudly claim for an All India Kisan following on the mass-basis. Karnataka Sabha was functioning previously and it may be revived soon, only if our Southern India comrades will. In terms of the resolution of the C.K.C. at Bombay, Mysore and Hyderabad State Sabhas' can't be counted as separate provincial units now. Hence they cease to exist if they exist at all. Now these states are to be divided, on a linguistic basis, by the neighbouring provincial Sabhas as their units.

Bengal Provincial Kisan Sabha has topped the list in membership enrollment this year. By enlisting as many as 83160 members; and after it have come the Punjab and Andhra Sabhas, which have enrolled 56004 and 55560 respectively. But as previously stated the real credit goes to the Andhra Sabha if we take all the factors into account. No doubt, Bengal comrades too do deserve our congratulations and I have actually thanked them and the Andhra comrades. Bihar Sabha is the fourth in this respect. Then come the U.P. Surma valley, Kerala and Maharashtra Sabhas whose membership respectively is 12096, 11520, 11190 and 9996. Of these four too the latter two have done marvellously, as they have only recently been organised anew. It is why I have sent them both our special greetings. As Bihar has been this year a most disturbed province and after that U.P., it may be said safely that they too have done tolerably well. Despite two consecutive cyclones which have desolated her, Utkal's work too

is surely creditables in this respect. Gujarat's work, though good, is below exception and yet it is a distinct improvement on last year's record. Berar and Gwalior Sabhas come in the end, there too is a decided improvement. Thus it is evident from the above analysis that there is to be found a progress in all the Provincial units in this respect and that augurs well for the future. In the circumstance is it too much to expect that this membership will be doubled next year and similarly in the year following, so that it will reach the figure of full twelve lac members next year.

1 See Doc.17 below.

17: All India Kisan Sabha – Finance organisational reportage no. 3, 1942-43 (extracts)

Indulal Yagnik Papers – File No. 22

[NMML]

Finance

An abstract of this year's accounts published in the end shows how poor and most unsatisfactory our finances for this year have been. Central Office has not been able to subscribe more than two daily papers only, no magazines, no weeklies, no more papers could be purchased for want of funds! If we are not enabled to subscribe at least dozen papers, we can't be expected

Income and Expenditure

Abstract of the accounts from 1st March 1942 to the 20th Feb. 1943.

| Income | | | | Expenditure | | | |
|------------------------------------|-------|----|---|-------------------------|-------|----|---|
| | Rs | as | p | | Rs | a. | p |
| 1. As per old accounts | 309 | 00 | 9 | 1. Telegram | 45 | 15 | 0 |
| 2. Provincial quota for 1942-43 | | | | 2. Postage | 45 | 10 | 0 |
| Bihar | 282 | | 8 | 3. Travelling | 112 | 3 | 6 |
| Gujarat | 16 | 4 | 0 | 4. Newspaper | 61 | 1 | 9 |
| Punjab | 96 | 0 | 0 | 5. Stationary | 30 | 0 | 0 |
| | 394 | 8 | 8 | 6. Printing | 152 | 0 | 6 |
| 3. Com. G.L. Narayana | 450 | 0 | 0 | 7. Office repairing | 22 | 4 | 0 |
| 4. Sale of literature | 27 | 15 | 0 | 8. Officer remuneration | 205 | 6 | 6 |
| 5. Interest | 12 | 0 | 0 | 9. President | 2 | 1 | 4 |
| 6. AIKC Member fee | 1 | 0 | 0 | 10. Balance | 1,985 | 8 | 5 |
| 7. Provincial quota for 1943-44 | 1,468 | | | | | | |
| Total | 2,662 | 3 | 0 | Total | 2,662 | 3 | 0 |

to be kept informed up-to-date of all the India and Provincial questions confronting the masses and the country. Travelling and other expenses too have been kept to the irreducible minima. And yet our current year income is not sufficient to meet even these charges if the expenses to be incurred for the full of February and March are to be added to those already met, Not less than three hundred extra rupees are required to meet these. First item on the income side shows the sum which remains with me after Palasa up to date and has not so far been touched, but for the smooth and successful working of the central office, a paid graduate assistant and a messenger is badly needed and even if to this year's money quota are added approximately two hundred rupees expected by way of delegate's fee, it will hardly suffice to meet our need. We should not forget that so far nothing has been paid for the President's office nor for Bulletin. Therefore we will have to take into serious account our financial resources before we make any serious proposal for additional expenses next year. And if despite this we make that, we must devise practical ways and means to meet extra expenditure. Of course, final accounts together with the new year's budget estimates will be submitted at Bhakana Kalan.

18: Police report on Kisan conference held at Alipur

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 526/43
[Bengal State Archives]

Secret

Intelligence Branch, C.I.D.,
13, Lord Sinha Road,
Calcutta, the 1st March 1943

No. 1504 CS/

Deputy Commissioner of Police, R/No. 9658
Dated 2/3/43.

My dear Rai Bahadur,

Secret information has been received that a Kisan conference was held at Alipur, in Raina, P.S. District Burdwan, being organised by important C.P.I. workers including Dasarathi Chaudhury and others.

Bani Das Gupta and Annada Bhattacharji of Calcutta (said to be a student of 4th year Arts Class Scottish Church College, Calcutta) represented the Women Front and the Students Federation Calcutta. Will you please suggest the identity of Bani Das (mentioned).

Yours sincerely
Signed

Rai J.B. Bhattacharji Bhadur, J.P.,
Deputy Commissioner of Police,
Special Branch,
Calcutta.

19: Sahajanand Saraswati to Bankim Mukherjee (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 533/43
[Bengal State Archives]

3.3.43

Intercepted a cover this afternoon containing a letter in English dated 1-3-43 stamped Patna, 1st March, 43 addressed to Com. Bankim Mukherjee, for Bengal Province Kisan Sabha, 249 Bombay St., Calcutta from S.S. Saraaswati,

Copy

Dear Bankim Babu,

Please accept my warmest greetings on your having been elected unanimously the President of the Punjab Session of the A.I.K.S. Believe me it is Comrade Indulal Yagnik who suggested your name to me some months back. But I kept it secret purposely. It was on the basis of the suggestion that I wrote in a previous letter to Comrade Rasul that the coming weeks would show as to what honour our present move would bestow on Bengal. Now one word about your address for the Punjab session. You are one of the few who understand the view point of the Kisan Sabha and the points, either of detail or principle it does not matter, where our Sabha differs from all other parties including even the C.P. You are moreover truly aware that ours is the mass organisation of those almost illiterate, simple and downtrodden Kisan, and surely not of intelligentsia or educated people and herein lies our difference in outlook and approach, despite the fact that we all stand for the classless society to be established without the least delay. It is why we always lay special stress on the economic problem of the Kisans. We visualize and see clearly their past and approach even upto date to the last point in policies through them only and not direct. I therefore do hope and believe that your presidential address will have truly the Kisan Sabha imprint. I shall be really happy if you are able to expound thoroughly the Leninist view point on Pakistan and Hindustan questions keeping at the same time in mind our resolution at Bihta on the point in order that you may not be accused of any partisan spirit. Food problem you are bound to discuss, I think and then the jute problem. Jute and Cane questions should be put together and discussed as they both are identical. I am glad to inform you that perhaps because of my repeated representations from here even the U.P. Govt. has removed the most harmful restrictions on the Gur export and now Gur crisis in U.P. too has gone up. This is the most recent information. If you lay particular emphasis on the organisation side, our work including membership enrollment campaign throughout this year, I shall feel relieved. I want to see our membership reach full 12 lakhs within two years. Hence my anxiety in this behalf. If we are not able to spend even Rs 600/ a month here on the central office no solid work is possible. It is why I am very anxious to see it through. I shall be reaching Bhakana Kalan anytime on the 27th March. Hence tell your office to send the annual report as soon as possible. I am bound to leave Bihta by the 28th March.

Sincerely yours,

Signed S.S. Saraswati.

20 Extracts from Fortnightly Report from Bihar for the second half of February

Govt. of Bihar, Freedom Movement Files - 1943 - File No. 79
[Bihar State Archives]

The Kisan Sabha people generally did not take part in any demonstrations although their President, Swami Sahajanand, is known to have sent an appeal for Mr Gandhi's release.

... While the public was largely concerned with Mr Gandhi's fast, those interested in lawlessness continued to be busy as before. The southern portion of the Bhagalpur district and the adjoining areas in Santal Parganas and Monghyr still continue to be in a disturbed state. Several instances of village chaukidars being waylaid and their uniforms seized have occurred. On February 11th, 2 chaukidars, who were on their way from Jamui after drawing pay at the police station, were attacked and relieved of their money and uniform. In the Santal Parganas dacoities are still on the increase. In two recent cases the name of Gandhi was used by the dacoits and in one case they set fire to a house into which they could not force an entry, with the result that 50 head of cattle perished. On the 13th, the Darbhanga Raj kutchery at Saraya was attacked by a mob of 500. The rebels fled on arrival of an armed police force, one of whom opened fire and dropped two men who were carried away by their companions. On the 17th, Superintendent of police went out with a party to deal with a gang of 200 dacoits in the hills, 15 miles north of Dunka. On coming up with the gang, the party was met with a volley of arrows and opened fire, killing or wounding several of the dacoits, but being outnumbered, had to retreat. Two police officers were injured by arrows and two guns were lost. Since then, however, these dacoits gangs have been hardpressed by various police parties and many arrests have been made and one of the guns recovered. In other directions also the situation in the Santal Parganas was reported to have deteriorated in the early part of the fortnight. Between the 14th and 16th, chaukidars were attacked in three different villages and one had his ear cut off. An amin of the Central Public Works Department was set upon near Deogarh and his instruments and papers were destroyed. In the Bhagalpur on the 13th, a chaukidar of Bihpur police station, who was a prosecution witness in the case instituted in connection with the looting of Thana Bihpur railway-station last August, was murdered. Congress volunteers seized the gun and cartridges of a school master who was out shooting on the 14th in Gogri police-station, Monghyr. A party of troops who had gone to a village in the interior of February 13 accompanied by Sub-inspector of Police to arrest an absconding dacoit leader met with opposition while pursuing a suspect. The Officer in charge of the party about to be attacked with a lathi, opened fire and shot the suspect dead. The absconder was produced before the party the next day. In the Tirhut Division, several important arrests have been made.



21: Extracts from Weekly Report from Ballia for the week ending 13.3.1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 39
[Bihar State Archives]

Congress – During the week under review there was no political activity of any kind in this district. Six absconders wanted in connection with rebellion cases were arrested during the week but none of them was of any notable importance. An important congress orator and agitator of this district, Ramnath Pathak, was arrested under Rule 129 DIR by the Patna Police. This individual is reported to have been a prominent congress worker but to have absented himself from the district prior to the rebellion. He is therefore not wanted in connection with any case in this district but his detention under the DIR is important. The Superintendent of Police remarks that it is noticeable that, though he took no active part during the rebellion, he did not again return to the district after the rebellion. As reported in para 1, one Shiva Prasad Sharma (S.P. Sultanpuri) was arrested under Rule 129 DIR on 10.3.43. Censorship of this individual's correspondence had shown that he was abusing his position as Secretary of the District Kisan Sangh by indulging in subversive propaganda. There was no anti-war activity during the week and 25 combatant recruits were enlisted whilst 228 technical recruits were sent to Lucknow.

22: Extracts from Weekly Report from Ballia for the week ending 20.3.1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 39
[Bihar State Archives]

The Supply officer has held several meetings with local grain dealers who appear to be on the whole in favour of Government's new food grains scheme and prepared to work them. As I have pointed out before my own view is that the great danger to the scheme lies in the fact that the gap between the wheat on the field or in the khalian in the possession of the cultivators and its being brought to market is not adequately bridged and there is no particular safeguard against hoarding by cultivators and zamindars. It is true that hoarding is an offence but it is extremely difficult even in this small district to check the stocks of perhaps 1,00,000 cultivators and zamindars and to allow for their own consumption and the amount they require for seed purposes.



23: Review of an editorial in *Janayuddha* dated 24.3.1943

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 562/43
[Bengal State Archives]

Bengal Form No. 6230

Special Diary from the Inspector of Section Case No.

In the editorial under the heading *Khadyo Age, Pare Zamindary Log* (Food first and then removal of Zamindari) it demanded the proposal of the Ministry to give effect to the recommendation of Floud Commission in Bengal at this present crisis. It demanded in favour of the countrymen for permission to cultivate uncultivated land without paying any tax, granting loans without interest and stopping for the present the repayment of debts.

It announced the publication of a book named *Swadhinata Yuddhey Rangpur* (Rangpur – on its way to its struggle for freedom).

It also announced that in the party conference on the 18th March, 43, 186 delegates from different districts had assembled.

The other articles contained the usual communist policies and view points. There is nothing objectionable.

Signed
3/4/43

24: Extracts from Weekly Report from Ballia district for the week ending 10.4.1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 39
[Bihar State Archives]

The condition of the district during the week under review remained satisfactory and the population continues to be mainly concerned with the harvest and with economic conditions. So far the harvest has shown no signs of coming into the market but I am told that as yet threshing has not been completed. There is a general feeling that Government intends to purchase all the new harvest at fixed rates and although we are trying to convince the cultivators that their crops will not be forcibly seized and that they had better sell now as no higher price will be obtained later on, I am afraid that our propaganda is not very effective against the conviction, which has been long held by cultivators, zamindars and Banias alike that the price of food grains will continue to rise and that it is in their interest to hold on to their stocks. On the whole there was no particular shortage of general commodities in the district although wheat was not easily obtainable in Ballia town. Prices of general foodstuffs rose considerably during the week and the Superintendent of police remarks that the rise appears to have been

caused by reluctance on the part of villagers to part with the grain in their possession. The price of rice rose by a seer in the rupee, maize by 1 seers, bajra by 3/4 of a seer, barley by one seer and ghee by one chatak

25: Weekly Report from Ballia district for the week ending 17.4.1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 39
[Bihar State Archives]

The condition of the district during the week under reviewed remained satisfactory and the population continued to be mainly concerned with the harvest and with economic conditions. So far very little of the *rabi* crops has yet reached the market but I am told that process of threshing is far from complete and that it is too early to expect heavy arrivals in the market at present. Slight arrivals are probably accounted for by the desire of some cultivators to sell off what they have threshed quickly before competition lowers the prices or at least this is a theory advanced by one of my visitors. Prices on the whole remained very steady but there was no wheat in the market during the week under review. It is reported that rice and other general commodities were easily available although the price was high. Government's Food Control Scheme is still regarded with a good deal of suspicion which I think is mainly accounted for by the ignorance of it, of most people. The new amendments to the scheme about buying and the withdrawal of the price control will doubtless alleviate the unfounded suspicion of the public that Government's ultimate object was to commandeer all the new food grains at very low prices. The small coin situation continues to be satisfactory and the use of stamps for small coins in this district has practically disappeared. The institution to experience any difficulty was the post office and this difficulty I found was due to the inertia of the Post Master who, when I asked him why he had not got a plentiful supply of change from the treasury where I knew it existed, said that he had asked the treasury about two months ago and been told that there was none and had not bothered since.

26: Punjab Women's Conference – (A circular) dated 18.4.1943

Govt. of Bengal (Home) File No. SR/506/43 – Part II
[Bengal State Archives]

Dear Comrade,
Please pass on the enclosed to your women's Fraction.

Punjab Kisan Women's Conference

Preparations for the All India Kisan Sabha Conference and mobilising women to attend it started since the middle of March. Comrade Shushila with a squad of about 3 or 6 girls toured

20 villages in Amritsar district, held 15 baithak meetings, with an average of 40 to 50 women at each meeting. In Ferozpur district, Comrade Shakuntala Sharda with three more comrades toured 16 villages, and as a result 50 women were brought to the Conference. In Lahore, three plays for women, 4 songs, 2 wall-papers, lectures on Women and Fascism and Soviet Women were prepared, speakers were trained, singing squad was trained, posters were made, and a group of 16 girls out of whom 7 were sympathizers (more girls could not go due to the college exams.) went to the Conference.

On the 2nd April before the A.I.K.S. Conference, the Kisan Women's Conference was held. A huge gathering of 2,000 women, old women, women with their children, young girls, in their teens collected for the Conference. 200 Muslim Women, the rest mostly Sikh attended. Women came from 9 districts 50 women from Ferozpur out of whom 10 had walked 50 miles to come to the Conference from Amritsar about 30 to 40 Women stayed right through the conference and others came to the Women's Conference and the A.I.K.S. Open session (over 1,000). From Hoshiarpur 8, Ludhiana 2 Jullunder 11, Sultan 2, Montgomery 9, Lahore 19, Gurdaspur 20, Women had come from 40 villages in all. From among these women who stayed at the Conference, 125 volunteers helping at the 'Lungar' (Free Kitchen) at the Open Sessions, etc.

Bibi Gian Kaur, Baba Ruhr Singh's wife, the veteran Kisan leader now in jail, presided over the Conference opened with a rousing Women's song, asking the Women to get up and unite to fight their common dangers. Swami Sahajanand addressed the Conference, and congratulated the Women for uniting and participating in the Kisan Conference, and that now that Women were joining in our struggle, we would be able to march ahead, much faster to our goal. Indulal Yagnik spoke of the Women's Government in Gujarat and how Women had participated there in the anti-imperialist struggle. One of the main resolutions was on the social demands of women. Comrade Jashwant who moved it showed how the many social obstacles facing women today prevented the vast majority of women from discharging fully their patriotic duty, what great sacrifices women had made, and how uncivilised and cruel was the treatment meted out to women. She appealed to the Kisan Sabha to encourage women to join and participate in the day-to-day work of the Sabha, and also to fight and defend the right of Women. She asked the Kisan Sabha to make arrangements where Women could meet and discuss their particular problems. At the same time, she urged the Women to unite and strengthen themselves in order that the Kisan Sabha would recognise their needs and fight for them. 'Until we ourselves unite on our common problems, we shall never make others fight for us'. Another resolution, moved by Sheila Bhatia, characterised the present period as one in which women were the worst sufferers and the speaker in a stirring speech asked the women to unite to face the problem of food, kerosene, cloth, the police *zoolum* and the dacoits in the villages and save their honour against the Japs. There were resolutions on the opening of depots for the essential necessities like cloth, etc. at controlled rates and the formation of People's Committees, a resolution demanding the release of Gandhiji and the national leaders, a message of greetings to the Soviet women, and a resolution supporting the 'Grow More Food' campaign of the Kisan Sabha. In between the speeches war songs, from Lahore, Ferozpur, and Amritsar, on social demands of women, Kisan's role in the defence of our country against fascism and Imperialism. The songs were the most appreciated and songs and dramas conveyed, more to women than our resolutions and speeches. The Conference was decorated with women's posters, and slogans referring to the resolutions and demands.

Open Session

Women turned up in large numbers to the Open Session meetings, but their interest here would flag and they would begin to leave. Sheila Bhatia spoke on behalf of women in the Open Session, and stressed that Kisan Sabha must become tribunals fighting for women's fights, for unity in each home. If the Kisan Sabha wants to reach its goal, Women must take a part in its day-to-day programme. She showed how women had helped men in the past in the *Kisan Marches* (?) and how they would help today 'but you must give them the opportunity, the chance. Let them feel that the Kisan Sabha is *Their Kisan Sabha*, fighting to make them equal with men.'

Remarks

Daily our comrades would meet to plan out the day's work, hear the reports, check-up on what replies we had given to the women's questions. The stories we heard showed us for the first time how far ahead the peasant women are. For instance, in the beginning before our women's Conference, etc. most of the women would say 'All your plans are very good and of course, we should organise ourselves. But we cannot do anything ourselves till you come'. What did we hear after the Conference? 'Of course, we are going to do something in our village. If we don't do something who will? We get going and then invite you' Another woman from Ludhiana said 'But tell me, how should we unite, on what particular thing can we all get together?' Our worker replied, You say there is not enough cloth, and no kerosene. Won't you all be able to unite on this, even if in the past you could get together? 'yes, of course, this can be done. All I'll do my best to get the women together! 'Then our workers were fixing up jobs for each district and how they would pass on the things they had learnt to the other women, one old woman from Ferozpur said 'But we cannot have these village meetings for a month. It is the harvesting time and we will not get a moment free. But don't you worry. We women will be discussing this all the time while we are working in the fields'.

The F.S.U. Exhibition thrilled them. They had never seen anything like it. Was there really such a place? One woman comes to our worker and says 'Do you know all the women can read in Russia, and you should see the hospitals etc.' Another group of women bowed before Lenin's picture for hadn't Lenin made women the equal of men? After our play on the Soviet women, one woman says 'just see, they were no better off than us. What they can do, why shouldn't we? Will you tell us more of what we should do? Tell us all you know. We want to learn so many things. You sit with us the whole time we are here'.

Our play on 'Grow more food' was liked the best among the women. When the name was announced, one of the women turned to our volunteer and said 'Grow More Food'. That can only be when the world changes. So our volunteer explained How we could by fighting for our Kisan demands grow more food, and grow strong to throw out our enemies and thus change our world. The women nodded, and the play started. When she heard the demands of the Kisans in the resolution on Grow More Food, she turns round enthusiastically: 'Of course, we can grow more food. Lots and lots of it. If we don't give you food for the town, who will?'

Group Meetings

We organised during the free hours district-wise group meetings, when we told them stories of fascism and of Soviet heroines, etc. these thrilled the women. When Kolya was being beaten in our Soviet Women play by the Fascists, one woman says 'You know this can really happen

here too.' We fixed up for each village their weekly women's meeting. Here we fixed up the woman who would take charge of calling the meeting, one who could read Gurumukhi or Hindi to read the party organ, taught them patriotic songs, etc. Our own workers were afraid that this programme we had put in our resolution was too difficult and women would not do it on their own. But every worker from every group rushed back within a few hours to report, 'It is simply wonderful. Every woman in my group wants to do something. They are enthusiastic'. We are confident that at least in 35 villages, women will be able to do something towards this programme on their own.

'We will Help the Women'

Right through the conference every worker was surrounded by groups of old, grey-bearded Kisans who were thrilled with seeing so many, many women participating in 'their' conference. 'Won't you come to the village and help us to organise our women there? We are not quite sure now to start the job' 'This is really grand'. Now I know we will get our Azadi soon. We were going so slow, because women had not joined us. Now we'll throw out the British soon enough. They forgot all their orthodox ideas. One old man said : 'But tell me how can the Kisan Sabha help?' Our volunteer said: 'Can't your Kisan Sabha see that none of its members beat their wives, that none of your members get their daughters married forcibly?' Yes, of course, we do this. But it had never struck us before, because I suppose we all did it.

Resolutions passed at the Kisan Women's Conference (2.4.43)

I. On Unity and Organisations

This Conference of the Kisan women emphasises the grave peril which faces every woman today. The prospect of Fascism is worst for women. Under Fascism women are the worst sufferers.

Not only this, but the very threat of Fascism, the War waged by a bureaucracy which cannot defend our land, brings in its wake further suffering on all women. Foodstuffs are scarce, Kerosene is either beyond the reach of most consumers, or unavailable, clothing is beyond the budget of most buyers, fuel and matches are at prohibitive prices. Here again we find that women have to bear the greatest burden. They cannot even fulfil their tasks as housewives, wives or mothers.

This economic crisis is the outcome of the National crisis, and itself further aggravates the situation. Towns are threatened by food riots, villages are made unsafe by dacoities. Neither in town nor in village is the safety of women protected.

It is in such a situation that the honour and life of every woman is at stake. For the defence of every woman, for her safety and honour every patriot must rally. The greatest need of the hour is the unbreakable unity of every woman, is the strengthening of women's organisations, fighting for the just social rights of every woman.

This conference makes an urgent appeal to all women, irrespective of caste, creed or policy, to join hands and unite in the Women's Self Defence League. It calls upon all women to fight for freedom, to fight against all social and political exploitation by participation in a united battle against Fascism. We must unite to defend our honour, to win our freedom.

II. Kisan Women and Social Demands

This conference of Kisan Women places before the people the intolerable social conditions

which prevail for women. The beating of women, lack of education, child marriage, the dowry system tend to make Indian women a social burden rather than a social asset. Woman, today, can play a most important role in the building of Indian society. In the struggle against imperialist oppression they have come forward to fulfil their patriotic duty. Their courage, their patriotism is unequal to none. They too can repeat the heroic deeds of their Soviet sisters. What is required is that they must be given the opportunity to fulfil their mission, they must be given the honour and respect which is their due. This conference urges.

1. That the beating of women be made illegal.
2. That Women be given primary education like men.
3. That system of child marriage be abolished and selling of daughters be made illegal.
4. The system of dowry be abolished and equal property rights be given.
5. One maternity centre and hospital for women be opened for every ten villages.

This conference appeals to the All-India Kisan Sabha and its affiliated committees to encourage women to participate in the day to day organisation work of the Sabha. It further appeals to the Kisan Sabhas to protect women's social rights, fights for their social demands and for equality in all matters, social, and political, between the sexes.

We appeal to all Kisan Sabhas to make arrangements at every centre where women can meet and organise themselves, for their training, where the news can be read to them, etc.

This conference appeals most emphatically to the Kisan women to join the Kisan Sabha and to unite for their social demands.

This conference appeals to women in general to hold women's village meetings weekly, preferably near the Kisan Sabha offices, to organize themselves and discuss their common problems, to hear the news read, to organize community signing, dramas etc.

III. Kisan Women and Grow More Food Campaign

This Conference of Kisan women supports the resolution of the All India Kisan Conference to 'Grow More Food'. It pledges its fullest support in this urgent patriotic duty of every Kisan man and women to strengthen our nation to fight against aggressors. It further reiterates the demands put forward by the A.I.K.S. for the successful carrying out of the campaign.

We women support the 'Grow More Food' campaign of the A.I.K.S.

1. Because more grain means more food in every Kisan home.
2. Because it strengthens our people to resist Fascism and Japanese aggression, the greatest enemy of womanhood.
3. Because it prevents food riots in towns which can lead to the most terrible civil war in our land, make brother strike brother, put sister against sister, disrupt our national unity and weaken our people in their struggle for national Government and national freedom.
4. Because food can help to unite our nation, Hindus, Muslims, Sikhs for food is the basic need of all to get food and other necessities of life like cloth, kerosene, matches — all communities, all sections, all organisations can and must unite.

The campaign to produce and distribute more food, thus becomes the foundation of the greatest national unity of our peoples.

We also appeal to the Kisan Sabha Committees to help women to discharge this patriotic duty, by fighting against the social obstacles, and thus facilitate women to play their full role in this national task.

IV. 'Opening of Depots and Peoples Committees'

This conference of Kisan women expresses its deep concern over the serious situation arising out of the scarcity of cloth and other necessities of life and the high rise in prices. The privation and hardship in obtaining essentials such as kerosene, the prohibitive prices of all iron goods, all these make the life of an average Kisan woman unendurable.

This conference of Kisan women urges the Kisan Sabhas to form in each centre People's Committees, representative of all classes, sections and trades, in order that the strongest possible village unity can be built which alone can improve the situation.

This conference further strongly demands from the Government

- a) That the prices of necessities of life like kerosene, cloth, matches etc. be controlled at a reasonable level.
- b) That depots be opened immediately for the above necessities.
- c) That the People's Committees should have supervisory powers over distribution in their particular localities so that there is no discrimination and the needs of all are met.

V. Greetings to Our Soviet Sisters

The struggle of the Soviet Union for the recognition of women as equal creative participants of society, has been gloriously vindicated at present in the Soviet women's effective work of defending the Soviet people and world democracy against fascist aggression. We Kisan Women of the Punjab, greet you Soviet Union women partisans, women workers, women collective farmers, all women of the Soviet Union today who lead the women of the world in the battle against Fascism, the greatest enemy of womanhood.

We, your Indian sisters, send you a special message of deep admiration and gratitude for your heroic sacrifices, your selfless courage, you have kept the Hitlerite bandits away from your province which would have been their first victim. With your blood and tears you have saved our blood.

We pledge here to you to be your worthy sisters, to work as you have shown to battle against Fascism as you have taught us. We women will follow in your footsteps to make India free in a free world.

6th April, 1943.



27: Sahajanand Saraswati to G. Adhikari

Indulal Yagnik Papers – File No. 6
[NMML]

The All India Kisan Sabha

President:
Bankim Mukherji

Gen. Secy.
Swami Shajanand Saraswati,

Shri Sitaram Ashram
P.O. & Tel. Bihta E.I.R., Patna
The 18-4-1943

Dear Dr Adhikari,

Thank you for the letter of the 10th¹ The Reportage No. 1/1943-44² is ready and will be duplicated tomorrow. It contains a factual account and all the resolutions passed at Bhakana. It has been prepared on the basis of the regular minutes of all the meetings. I, therefore, cannot see how anybody who has no minutes will prepare such an account. Moreover, if Namboodripad³ prepares that account as the joint Secretary I cannot allow and approve the publication of the same unless I have seen it. But if he does it, otherwise, of course, I cannot stop him. But I hope the office bearers of the Kisan Sabha to desist from such independent ventures in connection with the Sabha and its proceedings. because there is every possibility of mistakes creeping in the narrative while the writer does not mean and intend it. Moreover, it may create complication in future. Anyway this duplication of the publication of a factual account, I am unable to understand. No doubt more printing of the actual resolutions if you have got true and authoritative copies of the same can in no case be objected to. Rather it is to be welcomed.

I hope you will realise my point of view and agrees with me.

Sincerely yours,
General Secretary

To
Syt. Indulal Yagnik,
Vice President,
A.I.K.S.

-
1. Not printed.
 2. Doc. 28.



28. General Secretary, A.I.K.S. to Provincial Secretaries — Organisational Reportage No. 1, dt 18.4.44 (extracts)

Indulal Yagnik Papers – File No. 22
[NMML]

All India Kisan Sabha

Bihta, Patna
18.4.1943

Dear Comrade,

Please find attach herewith the Reportage No. 1 of this year. It contains all the resolutions adopted at the seventh session of the Sabha at Bhakana Kalan, Punjab, on the 3rd and 4th April, 1943. Together with the resolution of the plenary session, you will find a condensed report of the entire proceedings of the C.K.S., Subjects Committee and the All India Kisan Committee as also the complete list of the office bearers of the sabha for the current year.

In the end there are some appendices¹ which are given under broad heads the income and expenditure of the last year, the budget estimate for the current year, quota of primary membership allotted to each province by the A.I.K.C. and C.K.C. and the quota of donations fixed province-wise by these bodies. They thus present a true picture of the financial condition of the Sabha and show the only way to run smoothly and efficiently our vast organisation and conduct its work successfully in an organised way. Contrarily, if we neglect even in the least the financial and membership side of our work, we face the surest danger of losing our foothold and spoiling what we have done and achieved so far. It is in this context that the resolution No. 8 on organisation adopted by the plenary session is to be read and translated into actual practice. The utmost emphasis is to be laid on that side and that resolution this year in particular and you are requested to begin your work in that behalf right now. Note that you must send your membership money quota to the central office quarterly, if not monthly. If you do not proceed in this manner from just now it will not be possible to complete the membership quota allotted to you this year. As regards the donation you will have to send the entire sum by the 31st December next. Hence it will be better if you remit the same in three instalments, if not in a lump sum.

In this behalf it is to be especially borne in mind that the offices of all the subordinate units must be kept going regularly and every provincial office must set apart at least one competent comrade for the study of tenancy and other problems of the *kisans* mentioned in the resolution on organisation. It will be his duty to prepare periodically booklets and leaflets on the subjects and send copies of the same to the central office. Please see also that all the prominent Kisan workers of your province assemble soon at one place and they are given broad out lines of work to be done during the year. They must be instructed on how to take up and begin the Kisan work, how to approach and study the Kisan problems and how to report the same to their provincial office.

Please lose no time in getting all the resolutions translated in your respective vernaculars and printed and distribute them throughout the province concerned. As the paper is very dear and almost unavailable it would be advisable if the provinces get membership enrollment

forms printed and not receipt form and instruct their workers to collect signatures of the primary members on those forms. Of course, this is mere suggestion and no rule.

This is the first time that resolutions on tenancy laws and cooperative movement have been adopted by the open session of the Sabha as also a comprehensive resolution on sugarcane, jute and cotton. It is the duty of the provinces concerned to act up to them as far as possible. The resolutions must be perused very carefully and all the avenues and aspects of the work in connection therewith should be found out at once and the actual work started.

Your pointed attention is drawn to the resolutions of the A.I.K.C. and C.K.C. regarding pictorial exhibition and collection and you are requested to take necessary action in that behalf from just now. The A.I.K.C. resolution regarding the Red Flag song is also to be noted and earnest attempts are to be made in that direction from now.

Provinces should issue fortnightly reports or Kisan-news-letters, summarising the work being done throughout the respective provinces and indicating the problems facing the Kisan, their workers and the Kisan Sabha, and a copy of the same should positively be sent to the central office.

Swami Sahajananad Saraswati,
General Secretary

A Brief Report

The General Secretary of the A.I.K.S. had reached there much earlier on the 28th March and the President elect and the party on the 29th, followed by the outgoing president who arrived there on the 31st. Most of the members of the C.K.C. had reached by that day and the first sitting of C.K.C. commenced at 8.15 p.m. on the 31-3-43, with Com. Indulal Yagnik in the chair. The members that participated in the meeting besides the President were, Swami Sahajanand Saraswati, 2 Bankim Mukherji, 3 Manjur Habib, 4 Lala Saradindu Dey, 5 Sadhu Charan Mahanti, 6 Karyanand Sharma, 7 Bhagat Singh Bilga, 8 M.A. Rasul, 9 Muzaffar Ahmad, 10 Jamuna Karji, 11 Karam Singh Man. 12 Dr Lal Singh Gill, 13 Sardar Teja Singh Swatantra. They were joined by (14) Yadunandan Sharma later on. In addition to these 1 Dr G. Adhikari, 2 Harshadeva Malaviya, 3 N. Prasad Rao, 4 M.D. Deshpande, 5 J. Bukhari, 6 Abdul Kader Khan (Sind), 7, E.M.S. Namboodripad, 8 S.V. Parulekar, 9 Gopal Haidar, 10 Keraleyan, 11, Godavari Gokhale, 12 Irabat Singh were present by special invitation. They participated in all the meetings of the C.K.C. In all, six meetings of the old and one of the new C.K.C. were held.

In the first meeting after the minute of the last meeting had been taken as read and adopted, Swamiji as the General Secretary gave an oral account of the developments in Andhra following the C.K.C. meeting at Bombay in September last and stated how the Ranga group in office there seceded at last from the A.I.K.S. and issued a pamphlet, abusing and accusing the C.K.C. and in particular Swamiji and Indulalji. He complained about the non-receipt and irregular receipt of periodical reports from the provinces, with the result that even the annual reports from most of the provinces had not been received by the time he left for Bhakana. It was why, he said, no regular issuing of the A.I.K.S. Bulletin was possible. Swamiji also pointed out the urgent need of a paid office Secretary who could look after the office in his absence. He also submitted his lengthy report from Palasa to Bhamana regarding which it was decided that it could be considered later on. He was followed by the comrades from the provinces who gave oral accounts of the work done and problems facing them. After having fixed the

programme for the entire session the meeting terminated at 9.40 p.m. to meet again the next morning. Com. Yagnik presided over all the meetings of the old C.K.C. . . .

Open Session – First Day

The open session commenced at 4.15 p.m. on 3-4-43. The President entered the Pandal accompanied by the C.K.C. members and some delegates in a procession. He was applauded tremendously. The audience number 20000 or thereabout, of whom about four thousand were ladies alone. This was the peculiarity of the session. A good number of these women had travelled on foot, hundreds of miles to participate in the session. Some of them had the volunteer badges on their persons and had grown grey. Even the next day the audience remained almost the same.

Opening songs were sung by the F.S.U. squad from Bombay. Some excellent Punjabi songs too were sung by the boys and they were given rewards by some Kisans then and there.

Com. Atta Ullah Jehania, Chairman R.C. next delivered his welcome address in Punjabi. Address was printed in Urdu. He was followed by another song sung by a woman, Lajvanti.

At this stage Com. Bankim Mukherji was given a tremendous ovation when he rose to deliver his presidential address in Hindustani, although the same had been printed in English. He began at 5.40 P.M. and finished at 6.50. He was followed by a number of excellent poems recited by a Kisan poet, Abdul Azis Kasar, Lyalpur. The poems were so much appreciated by the audience that he was rewarded Rs 14 in all for them, which he in turn gave over to the A.I.K. Sabha. A Kisan worker, Dharam Singh, gave Rs 2 to the Communist Party and the same was handed over by Dr G. Adhikari on behalf of the C.P. to the A.I.K. Sabha.

The following messages. Com. Sohan Singh Joshi' read in Punjabi the message on behalf of Com. P.C. Joshi in English. He was followed by Dr Bhag Singh recently released from Jail, who read the message from the comrades in the Gujarat Jail, Punjab. Com. Jagjit Singh followed him and read out messages of good wishes and greetings from Syts. Raj Gopalachari, the Secy., Punjab Provincial Muslim League, N.M. Joshi, Secy. A.I.T.U.C.P. Gladyshev of Soviet Tass Agency, American information Deptt., Afghan Consul in India, Punjab Civil Liberties Union and Arthur Moore.

After that the first resolution on condolence was moved from the chair and adopted, all standing. And the session adjourned at 7.50 p.m.

(4) Procession and Flag Hoisting

Two important functions of the 3rd April remain to be narrated and they were the procession of the President elect and flag hoisting ceremony. At about 10 A.M. a grand procession half a mile long, with the president and Bana Sohan Singh on horse backs, started from the Pandal, went straight to the village near Khalsa and returned. It was really a grand thing, Jathas of workers and volunteers from different districts had joined it with their posters and placards. There was a jatha of women workers and another of the textile workers of Amritsar. A good number of Muslim Kisan workers too were in it. It was most orderly and regulated. Various slogans suitable to the occasion were being uttered at intervals.

When the procession had returned it went straight to the Red Flag post and the flag hoisting ceremony was performed by the outgoing President, Com. Indulal Yagnik. After the Red Flag songs had been sung in chorus by groups, Com. Yagnik delivered excellent speech on the significance of the Red Flag and its hoisting and exhorted the huge audience to gird up their

loins to achieve the Kisan Mazdur Raj without delay. The ceremony came to a close at about noon

[Omitted: Subject Committee's 3rd sitting -- Ed.]

(7) The All India Kisan Committee Meeting

The A.I.K.C. as such met at 8 p.m. on the 4-4-43 and elected in addition to the President, Com. Bankim Mukherji, the following office bearers and C.K.C. members with Com. Bankim in the chair and thus completed the new formation of the C.K.C.

| | |
|------------------|--|
| President | Com. Bankim Mukherji (Bengali) |
| Vice Presidents: | Com. Indulal Yagnik (Gujarat). Baba Sohan Singh -- Bhakana (Punjab) |

[The rest of the names have not been printed -- Ed.]

When the name of Swamiji was proposed to continue as the General Secretary he flatly declined the offer and said that as he found no Kisan imprint and touch on their works and as it seemed to him that all of them had turned completely as if mere political beings with no other main ideas left in their minds, he felt that he did not fit in the place of the General Secretary, to be frank. Moreover, he found almost no response from the provinces in sending regular reports despite the reminders repeated ad nauseam from the central office. And if he wanted to do justice to the post of the General Secretaryship he must ever remain confined to the office and could not leave it for tours in the absence of a paid graduate as the office Secretary, whose appointment, if at all made, must be left to him. The committee severally and collectively endorsed with one voice Swamiji's complaint, assured him of full cooperation in all matters in future, promised to give no occasion to complain and gave him complete choice in appointing a paid assistant as desired by him. Thereupon he agreed to continue as the General Secretary with the clear word that if they did not fulfil their pledge he would expose them in the next open session.

Comrade Yagnik too at first was not willing to accept Vice Presidentship. But he was persuaded by the comrades and he agreed. . . .

[Omitted: 1,2,3 -- Ed.]

1. In order to give some measures of relief to the cultivating tenants from the crushing burden of rent and from power of eviction which keeps them in bondage and to give them an impetus for carrying out their immediate task of growing more food, the Sabha demands that uniform legislation should be immediately adopted by all provincial Govts on the following lines:

- (a) No cultivating tenants should be ejected by the landlord during the period of War, as long as he pays his rent.
- (b) Rents should be fixed at double the amount of land revenue or 1/10 of the produce commuted in cash.
- (c) Increase in rents should be prohibited during the period of War.
- (d) For all standing crops, all trees grown on the land and improvements made by the cultivating tenant he should be compensated when he is lawfully evicted.
- (e) Landlords should be severely penalised for exacting free and extra cesses from the cultivating tenants.

5. In provinces where some protection is given by legislation to the cultivating tenants, but its provisions do not meet the needs of the situations and have proved to be unsatisfactory, the All India Kisan Sabha demands that the govt should remove the defects in legislation which actual practice and experience have glaringly brought out.

6. The Sabha exhorts all Kisan workers to (1) mobilise all tenants on the basis of these demands, (2) to carry on a vigorous campaign for taking advantage of existing legislations by all available means, (3) to bring popular pressure to bear on Govt. to pass new law and order or apply existing laws so as to give adequate protection cultivating tenants....

(12) Cooperative Movement

The burden of agrarian debt has continued to mount up further during recent years in spite of the old and new laws passed by provincial Govts to scale down debts.

The unreasonable and inelastic policy of Govt. making inexorable demands in land revenue, irrigation rates etc. compels the poor Kisan to sell his produce prematurely at heavy loss. The moneylender's debt and interest charges and the landlord's rent leave hardly anything to the Kisan even during good years before the end of the winter.

While the Kisan is denied access to the free market as a free agent, he is compelled even under the most favourable circumstances to sell his produce at rates less than those prevailing in the open market and has to pay oppressive charges of all kinds levied as a matter of custom by the Dalals and the Mahajans. On the other hand he loses even still more in paying excessive amount in buying the necessities of his life.

The Kisan is there compelled to place himself at the mercy of the sowkar to secure seeds, manure, cattle and grains to feed his family, during the monsoon to enable him to carry on his usual agricultural operations. If his old sowkar refuses to lend him money on the old terms he is compelled to submit to even more oppressive terms from new sowkar to keep his body and soul together. The Kisan can not refuse payments to the sowkars at harvest time as he is mortally afraid of the prospect of submitting to even worse terms on the eve of the next monsoon.

1. Not printed

29: All India Kisan Sabha organisational reportage no. 1 (contd) dt 18.4.1943 (extracts)

Indulal Yagnik Papers - File No. 22
[NMML]

18.4.1943

13 Money crops - Sugar Cane, Jute and Cotton

The Kisan Sabha finds that the danger that was envisaged for the cultivators of money crops like, cotton, sugarcane etc. due to the war and to the consequent loss of overseas markets, has not only more and more overtaken the Kisans of these crops but has been aggravated by the planless policy of the Government and the speculative activities of the millowners and

commercial bodies. The Kisan Sabha has after a year noted the problems of raw jute, of cotton, and of sugarcane, and the distress of the cultivators of the crops, who were being ruined as a result, so that the cultivators of these main crops now face a disaster everywhere.

This planless policy of the govt. expressed itself in the sugarcane crisis in Bihar and U.P. in the last season. The Bombay meeting of the C.K.C. demanded that the rise and fall in the price of cane, when it is above the minimum level (to be fixed previously by the Government) should be determined periodically on the basis of the rise and fall of sugar price, and in consideration of the market prices of gur and sugar both. The price of gur in the last season rose very high and naturally Kisans found it more profitable to crush cane into gur with the consequent cane strike in many sugar mills. The best way of solving the problem was to increase the price of sugarcane to Re 1 per maund as demanded by Kisan Sabha. But the Government, true to its policy of supporting the mill owners, granted a nominal increase of two annas per maund and followed it up by practically banning the export of gur from U.P. which caused tremendous financial loss to the cane growers. That the U.P. Government's order was arbitrary and partial is proved by the fact that the Bihar Government imposed no such restrictions. The Kisan Sabha condemns this planless policy of the Government concerned and demands that it should adopt a fixed policy on this problem on the lines indicated by the Bombay C.K.C. The Kisan Sabha at the same time calls upon the Kisan Sabhas and workers in the cane-growing areas to mobilise the growers from now on through building up cane growers' committees on the basis of the widest possible unity for their demands in order to secure a fair price in the coming season.

In view of the fact that the existing acreage of sugarcane is sufficient to supply the needs of the mills, the Sabha advises the Kisan not to increase the area under cultivation and to prepare 'gur' so long a fair price is not guaranteed to them for cane.

Jute

The progressive deterioration in the condition of jute growers of Bengal is due to the lack of policy of Bengal Government, their surrender of the interest of peasantry under pressure of the European mill-owners and bureaucracy, besides the aggravation of the situation by the war and the consequent loss of overseas markets for jute and the lack of transport facilities within the country. Jute growers did not receive a fair price for their crop under these conditions and the prices of raw jute reached its lowest point in 1942. Jute was overgrown and the mill owners forced the cultivators to sell jute crop at the lowest possible price. Restriction of the jute area for cultivation, guarantee of a minimum price for jute and purchase by the Government were repeatedly demanded by the Kisan Sabha and the Kisans.

Restriction of jute cultivation has grown urgent as Bengal has been found a deficit province now with regard to food and is in urgent need of growing more food to feed its own people. The area under other crops in Bengal, particularly that under a money crop like jute which has lost its overseas market, should therefore be released by as great an extent as possible to grow rice and other food crops. With large stocks remaining unconsumed restriction of cultivation is more urgent now. Jute to the extent of 54 lakh bales for example remains, after the season of 1942, in the hands of the mill owners and their agents. While their annual need is estimated to be this year less than 60 lakhs of bales. The cultivation of jute in the circumstances to 25% of the jute area, as recorded in 1940, is therefore estimated to meet satisfactorily the demands of the industry in 1943 and to ensure a fair price for their crop to the jute growers. It would also release 17 lakhs of acres of land for the cultivation of rice, and thus increase

the production of rice by 2 lakhs of tons. But the Bengal Government which is understood to have at first contemplated such reduction of area to 33% of the total jute lands surrendered to the demands of the European jute mill owners who were backed by the Government of India and the Bengal Government fixed the area for jute cultivation in 1943 at 50% of the total area. Such an area under jute is to throw into the market altogether one crore bales of jute in 1943 in addition to the 54 lakhs of bales already in hand, while the annual need of raw jute is not over 70 lakhs (including 13 lakhs for export) at present.

The Kisan Sabha while condemning this deliberate surrender of the peasants interest by the Bengal Government and thus refusing to encourage growing more food in Bengal, urges jute growers of Bengal and elsewhere:

1. To limit their cultivation of jute to 25% of their respective jute lands in order to secure a fair price for jute.
2. To resist all pressure and persuasion of the interested parties aimed at increasing the area under jute.
3. To grow in the rest of the lands thus available rice and other essential crops which would secure for them their food for the year and the food of the people in general.
4. To demand fixing a minimum price for jute at Rs 15 per maund.
5. To demand guaranteed purchase by the Govt. and their opening godowns etc. for the purpose in purchasing centres.

Cotton

The chief money crop of a vast number of peasants in Central India and in other cotton growing areas, has lost its overseas markets and raw cotton has for long recorded a low price, while the textile products rose higher in prices, until only two months ago, raw cotton price showed improvement and speculative activities again forced up its price to an unprecedented height. This speculative rise in the price of cotton has been reflected in the phenomenal rise of rent in Ryotwari and cotton areas and is forcing cotton growers in their turn to accept lands for cotton cultivation on such high terms as would prove disastrous when the speculative tendencies have ended.

The Kisan Sabha notes that even before this rise of price of cotton the Cotton Mills were making huge profits, while the cotton growers were in distress and the people of the country as the body of consumers were the victims of high prices of cotton goods. The present rise of price too, largely due to speculative causes, hardly benefits the real cotton growers, on the contrary, it threatens the grower with utter ruin, while the people in general have today neither enough yards of textile for themselves nor means to buy textile goods available at their present rates which are about 400% of the usual price for them.

The Kisan Sabha therefore demands that:

- (1) Rent in ryotwari and cotton areas be checked from increasing.
- (2) Minimum and Maximum prices of raw cotton be fixed in accordance with the condition of the cotton market to check speculation and save the cotton grower from speculators.



30: All India Kisan Sabha organisational reportage no. 1, (contd) dt 18.4.1943 (extracts)

Indulal Yagnik Papers – File No. 22
[NMML]

15. Abolition of landlordism and Floud Commission Recommendation

The All India Kisan Sabha, while reaffirming its considered view on the question of abolition of landlordism without compensation, regrets to note that the Govt. of Bengal, which decided to open up the question and appointed for the purpose a commission, known as Floud Commission at a great cost, has practically shelved the report of the said commission. The recommendations of the commission, although they fell far short of the legitimate demands of the Kisans, favoured abolition of landlordism with a partial compensation to the landlords. But the Govt. of Bengal appear, however, unwilling to implement even this into practice. If this action of theirs is an index to the attitude and measures of the other provincial Govts. with regard to landlordism, this is a serious warning to the Kisans and Kisan Sabha of India as to the chance of winning within any short time their due demands and right to own the land the Kisans till.

The Kisan Sabha therefore calls upon the Kisans everywhere to take a serious note of the fact and mobilise strength fully with a view to have landlordism in India abolished permanently and completely against all opposition and temporising.

31: Extracts from Fortnightly Report from Bihar for the first half of April 1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 79
[Bihar State Archives]

... In connection with the burning down of kacheries belonging to landlords, it is reported from the Jamui area that peons and tahsildars belonging to local estates whose kacheries have been burnt down are still afraid to give evidence. The police have reason to think that in some cases there is sympathy with the saboteurs. The burning of kacheries often means the destruction of records, which to debtor tenants is not distasteful.



32

Activities of National Youth League

Govt. of Madras Pub. (Gen.) Dept. - File G.O. No. 2/1944
[TNA]

Secret
Confidential

Dated: 27th April 1943.

Naitonal Youth League — Activities of¹

Consequent on the subsidence of the Congress rebellion and the elimination of important Congress leaders, a number of irresponsible youth in Andhra took part in the Congress programme. The lifting of the ban on the Communist party and their cry of 'peoples war' alienated these youth from the Communist Party as a result they were without any proper organisation to guide their subversive activities. To correct this the Andhra Branch of the 'provincial Committee of the National Youth league' was established on September 1942 at Bezwada. The primary object of this organisation, as seen from its rules and object is to prepare youth to work for the attainment of Independence and to improve their national and international outlook and cultural faculties. This organisation comprises communist renegades, socialists, followers of N.G. Ranga, Congressmen, Forward Bloc agitators and Kisan workers.

Emissaries, presumably from the Congress's All India Centre at Bombay visited Andhra in January 1943 to study the situation, and toured Guntur and Kistna districts. They met some pro-congress elements i.e., P.Bhayankara Venkatachari, S. Seshagiri Rao and others. Their presence in Guntur district synchronised with the bomb explosion in January and they may have had a hand in these. This view is supported by the contents of an incomplete report on the conditions in the provinces which was seized during the search of the residence of S. Ammayya, an important Kisan worker and a follower of Ranga. This report shows that the members of the National youth League are close associates of the group responsible for the violent activities in the Ceded Districts including the Jammal Madugu robbery. The return of the emissary to Bezwada in the first week of March 1943 which synchronise with the bomb explosion at Bezwada Railway station, suggests that these incidents were the work of a group of Youth League working under his directions.

A secret National Youth League fund was started and the money was utilised to bring out the illegal and objectionable paper *Viplava Jwala* apparently the organ of the league.

Under the direction of the Central Committee in order to organise the National Youth League on provincial basis and to give re-orientation to its original programme, a secret meeting of important members belonging to various revolutionary organisation was held on 25.2.43 at Bezwada by the Andhra Planning Committee. Some of the members of this committee were concerned in cases connected with August disturbances and were underground. The programme chalked out at this meeting envisaged propaganda by legal and illegal means in furtherance of the congress movement, and the rallying of existing revolutionary forces in an organised manner to bring about ultimate national revolution. Since their meeting, the organisation of the branches of the National Youth League has been going on stealthily. The emissary from the central committee had made the following suggestions for future work viz.

(1) satyagraha and filling of volunteers in each taluk for propaganda and to increase membership. (3) To have a squad of 60 youths in each district ready to undertake 'big programme' and in the event of an upheaval like the August Rebellion, to guide the people and (4) to conduct salt Satyagraha in Nellore district.

This League appears to be an attempt to revive the Congress Socialist Party under a different name. The emissary has been arrested, as have some of the district organisers have been searched and in a few instances prejudicial literature seized. Cases are being launched where practicable.

The movement is being watched closely but the police counter action already taken must have set it back.

W.F.A.Hamilton.

Supdt. of Police
Special Branch, C.I.D.

Copy to the Asstt. Director(s) Intelligence Bureau, New Delhi, and the Central Intelligence Officer, Madras.

1. See Doc. 60 in Chapter I – Sec A

33: Extracts from Fortnightly Report from Bihar for the first half of May 1943

Govt. of Bihar, Freedom Movement Files - 1943 -- File No. 79
[Bihar State Archives.]

Kisan Sabha – A conference was held in Monghyr district on April 24th and 25th and was presided over by Swami Sahajanand. Karjanand Sharma, Sunil Mukherji and others were present. About 1,000 persons attended. The speakers urged the Kisans to unite against the zamindari system and to support the war against the Japanese. They said that the Kisan Sabha would fight for India's independence in due course.

A training camp for Kisan workers is about to open in the Gaya district. The District Board Chairman, Ram Chandra Sharma, is a prominent Kisan Sabha man and is taking an active interest in the training camp. Swami Sahajanand and Rahul Sankrityana are proposing to come; also Bankim Chandra Mukherji and Indulal Yagnik, President and Vice President of the All-India Kisan Sabha.



34: Godavari to Abdulla Rasul (interceptor letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 22/43
[Bengal State Archives]

9.5.43

Copy of an English letter dated 4-5-43. Stamped Kalyan 6th March 43, addressed to Com M.A. Rasul, 249 Bowbazar St. Cal.

From: Godavari – Rambug., Kalyan.,

Dear Com. Rasul,

I recieved your letter of the 29th April on the 4th May as I was out in the villages for enrolling members of Kisan Sabha.

I shall make enquiries and let you know the price per bale of cotton – concession rate for relief work and freight charges etc. within a week.

My work is going on well. I hope you and our other comrades there are O.K.

Lal Salams from Com. Parulekar

Yours sincerely

Signed Godavari

35: Extracts from Weekly Report from Ballia for the week ending May 15 1943

Govt. of Bihar, Freedom Movement Files – 1943 – Files No. 39
[Bihar State Archives]

... Two Kisan Sabha workers returning from Benaras were searched by the District intelligence staff and were found to be in possession of over 1700 copies of a printed Hindi leaflet entitled 'An appeal to the Kisans of Ballia on behalf of the District Kisan Sabha'. They had also in their possession a number of Hindi books which are under examination. The language and contents of the leaflets are very wild and other than their confiscation no further action will be taken unless the contents of the books are found objectionable.



36: Extracts from Weekly Report from Ballia district for the week ending dated 22.5.1943

Govt. of Bihar, Freedom Movement Files -- 1943 -- Files. No. 39
[Bihar State Archives]

... There is information that the Communist party of the district intend to celebrate 'Kisan Day' on the 24th of May, 1943 at two villages. It is not known whether this intended celebration has anything to do with the 1700 copies of an appeal to the Kisans of Ballia on behalf of the Kisan Sabha which were reported to have been recovered last week. Suitable preventive measures will, of course, be taken to cope with the intentions of the communist party.

37: Summary of secret reports received about revolutionary matters for the week ending 13th May 1943

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

12.6.43

11. (viii) *K.S. and other Peasant Groups*

1. A.I.K.S. Bankim Mukherji, M.L.A., presided over the seventh Annual session of the A.I.K.S. Conference which was held at Bhakana Kalan district Amritsar, Punjab, from 2nd to 4th April. The open session which began on 3rd April, was attended by the 5,000 persons of whom a large number were local peasants. In his address the president traced the origin of the crisis facing the country, which he attributed to the repressive policy of the Government and its refusal to release the Congress leaders, coupled with the food shortage caused by the hoarding of profiteers and the inefficiency of the Government arrangements. To meet this crisis he exhorted the Kisans to unite the people and stop sabotage, to demand a National Government to defend the country, to launch a grow-more-food campaign and to deposit the produce of their crops with Kisan Committees without satisfying the money-lenders or paying the land revenue until such time as the Government recognised their demands and enforced an effective price control system.

It is reported that only 1475 delegates from different provinces attended the conference. The speeches delivered were merely elaborations of the familiar communist themes, that the recent disturbances are the outcome of Government repression, that the Congress leaders are anti-Fascist and should be released so that a National Government may be formed which alone can defend India effectively, that sabotage is the work of the fifth columnists and not of the Congress and is contrary to national interest, that the Government which is dominated by the landlords and profiteers is responsible for the food crisis and that Kisans must rely on their own efforts to solve the food problem, although this and other difficulties can only be

overcome after a Congress-Muslim League compromise have paved the way for the overthrow of the Government and the setting up of Kisan rule in its place.

The main value of the conference, it is reported, lay in the opportunity it accorded to the inter-provincial communist workers to meet and elaborate further plans, and it is clear that intensive efforts will be made this year to increase the membership of the Kisan Sabha and to extend its influence throughout the country. It is also clear that the Kisans will continue to be used as an instrument for propaganda and agitation by the Communist Party of India.

The following resolutions among others, were passed at the Conference:

- (1) Expressing solidarity with progressive people movement in the world.
- (2) Sending greeting to the Red Army and the Chinese Army and urging the opening of a second front in Europe.
- (3) Calling upon the kisans to unite to demand the release of Mr Gandhi, and to take part in a country-wide campaign to stop sabotage, to solve the food crisis and to promote Hindu-Muslim unity.
- (4) Urging the opening of cheap grain shops by the Government.
- (5) Emphasising the need for carrying on a 'grow-more-food' campaign.
- (6) Urging the reorganisation of the Kisans Sabha by touring of the Kisan workers, setting up Kisan Committees in every village etc.
- (7) Condemning the excesses committed by the Govt. officials, arrest of the communists and other political leaders, the forcible collection of war funds. etc.

38: Sahajanand Saraswati to Provincial Secretary – 1 July 1943

Indulal Yagnik Papers – File No. 6
[NMML]

All India Kisan Sabha

G.S.C.2 / 43-44

*Bihta, Patna,
Dated 1.7.43.*

To
The Provincial Secretary.

Dear Comrade,

I am confident, you have taken up the enrolment of primary members campaign in right earnest and made already an appreciable headway in the matter. But barring Bengal, U.P. and Bihar no province has so far sent to this office its money quota of the membership fee. Of the above three too Bengal had done excellently and sent quota for 34182 members with a promise to remit more soon. Please therefore see that your province to remit more soon. Please therefore see that your province does not lag behind in this race of enrolment.

As regards the donation quotas fixed for the provinces so far only the Punjab and Andhra have sent their first installment of Rs 150 and 100 respectively while others have kept quiet. Hence your are reminded to send the same in full or at least its first instalment soon.

It appears, some provinces and comrades in their sheer anxiety of Hindu Muslim unity to be achieved soon either have suggested or are about to suggest some schemes therefore which commit the Kisan Sabha to the principle of Pakistan in some form. They are seriously warned against such ventures and are once more reminded of the resolution adopted at the C.K.C. at Bihta at the time of the annual session and printed at the page of the Reportage no. 1, 1942-43. It is as follows: 'The Council having discussed the question of Pakistan at some length is convinced that it would not be in the interest of the Sabha to commit themselves to any opinion either for or against Pakistan in any form. The Council therefore requests all the Kisan Sabhas, provincial and district units and the members of the executive committees and all meetings and conferences organised under the auspices of the Kisan Sabha not to pass or discuss any resolutions, or do propaganda in any form for or against Pakistan or any similar schemes hereafter'.

The provinces are moreover requested to send regularly henceforward the copies of all the political or otherwise important resolutions bearing on all India matters passed by the committees or conference provincial or otherwise. They must not fail in the matter. Very few provinces are sending their monthly or other reports and they are reminded to make it a point to send the same regularly to this office.

Comradely yours
General Secretary.

39 Chandrabhai to Swami Sahajanand Saraswati (dt 6.7.1943) (intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 538/44
[Bengal State Archives]

Baroda, 6th July, 1943

Revered Swamiji,

I am sure you might be corresponding with Indulal during this time. Since last I wrote to you about the Baroda Committee in which for the first time he not only introduced reforms (in the form of better farming, better business and better living as the programme for the Kisan Sabha) but wholly went to reformism and began to develop bitterly anti-Communist. This reaction has its basis only in his psychology, which could not tolerate any individual or institution becoming his equal. He could not find any grudge against any individual from practical point of view because I assured him that party Members in the Kisan Sabha will take orders from him only in the working of the Kisan Sabha. But the ego-centric self only prevailed with him and he began with compelling communist workers in the Kisan Sabha to resign from the Communist party. Com. Kaushik from Godhra, Lakshmi Shanker Pandya from Kheda. Com. Pangarkar, Ramaji Chaudhuri, Chhagan Telia, Devidas Banji and Thakorbhai Patel from Surat District are examples. With all this I went on to improve all relations with him, but his attitude from being anti-Communist was becoming anti-political. I should admit, I failed.

Today he manages Udwada in Surat district, Makakhad in north Gujarat and Sardhar in middle Gujarat. These are three primary schools for poor classes in the village, and boarding and lodging is free there for which he has to gather money contributions. Wherever possible, some militant Kisan workers are made mere teachers there. In this, Thakker Bapa, an old out-of-date Gandhian is the only friend and financial supporter he has got, next of Amritlal Sheth.'

Sjt. Indulal's 2nd activity is working along with Government's Co-operative Societies and is dragging wherever possible the Kisan Cadres in this. I do not object to Co-operative. My objection surely is turning the Kisan Sabha into a Rani Paraj Ashram or a Co-operative.

He had no grounds or any reason to dismiss those Communists from the Kisan Sabha, who did not resign from the party. So he has decided to resign himself from the A.I.K.S. and to start Khedut Sabha, a rival organisation in Gujarat. This he will officially do with all his friends very soon. I am not writing a separate letter to Com. Bankim. Please let him know this and let me know your mind by the return post, when I will write further.

I am developing Kisan Sabha round about Pavagadh, and my address is: Chandrabhai Bhatt, Chutdi Zampa. Krushinh Ashram.

Yours

Chandrabhai.

40: Extract from Weekly Report from Ballia district for the week ending 10 July 1943

Govt. of Bihar, Freedom Movement Files - 1943 - File No. 38

[Bihar State Archives]

... Some Hindi pamphlets entitled 'Ballia ke kisanon se appeal' dated 14.5.43 have been distributed in villages in the Bansdih and Sikandarpur circles. These pamphlets were printed in Benares and were recovered by the D.I. Staff in the month of June from the possession of two Kisan workers who were bringing them from Benares. The pamphlets and some communist literature found in their possession were examined and found unobjectionable and then returned to them. Since then however a letter has been intercepted by the C.I.D. from one of these individuals addressed to the Secretary, District Communist party office Benares in which the return of these pamphlets by the police has been represented as a remarkable victory over the district authorities. The sender of the letter has been called up by the Superintendent of Police and will be admonished. The pamphlets in question although finally passed as unobjectionable were definitely borderline case.



41: Abdulla Rasul, General Secretary, Bengal Provincial Krishak Sabha to General Secretary, Pabna District Krishak Samity, dated 17.7.34 (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 538/43
[Bengal State Archives]

English translation of Bengali letter dated 17.7.43 written by (1) Abdulla Rasul – General Secretary, Bengal Provincial Krishak Sabha, 249, Bowbazar Street, Calcutta to the (2) General Secretary, Pabna District Krishak Samity, Jackson Road, Pabna, Produced by C.A. 40 (Interception) dated 20.7.43.

Dear Comrade,

The report on the working of your District Samity and the reply to our queries have been received. Some comments will be made on some points of your report.

1. 26 members have been enlisted from April to June. It is believed that more members could be easily enrolled. You have mentioned that 400 men were present in 20 sittings, but of these men, at least, 100 could be easily enlisted. But that was not done. Most of the men would have been members by paying one anna each, whom you had distributed 234 mds. of rice six rupees less per maund. That was not believed to have been done too. At the time of sittings, the squads are to be requested to pay attention to this.

2. We were not informed about the result of agitation done for the seeds of wheat and seedlings of paddy. This ought to have been reported.

3. The real accounts (names and addresses) of the cases of death of starvation, if true, be given. Those would not be published, which are wanting in evidence.

4. It is written that you cannot adjust the art of using the slogans. You ought to know more elaborately about this. It will be discussed when we meet.

5. What you have done in the agitation of 'Grow More Food' is on the whole fair at the present weak position of yours. But this weakness is to be overcome soon, otherwise you will not keep pace with the agitation.

6. Slogans of the District Samity are all right, but are not sufficient. Slogans about the agitation 'Grow more Food' will be given more clearly and perceptibly by considering the local situation.

7. You have written that Government help is required to bring the seeds. Nothing can be done, if it is not known from where and what quantity are to be imported.

Red greetings.
Signed Abdulla Rasul.
General Secretary.

Intercepted by me on 20.7.43.
Signed A.K. Chatterji,
D.I.O. (2), Pabna,
20.7.43.

42: Dinesh Lahiri to General Secretary Bengal Provincial Kisan Sabha (undated) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 533/43
[Bengal State Archives]

From Asst. Sub.Inspector: Sunil Kumar Roy Chowdhury. Calcutta dated the 19-7-1943

English gist of a Bengali letter dated nil bearing the postal seal of issue Rangpur dated 16.7.43 intercepted at Bowbazar P.O. on 17-7-43 from Dinesh Ch. Lahiri, General Secretary. Rangpur Dist. Krishak Samity.

To the General Secy., Bengal Prov. Kisan Sabha, 249 Bowbazar St.

On 14-7-43 the Board of Secretaries of the Rangpur Dist. Krishak Samity has adopted the following line of action in order to observe 'Grow more Food Campaign' week.

For this:

1. To make the Kisan front strong.
2. To find out ways and means for the output of more crops.
3. To conduct campaign through squads
4. To keep the offices in action.

So henceforth, the production conference shall have to be made successful through 'Grow more food Campaign' week.

Along with this following works also should be done.

- 1) To organise Kisan Volunteers
- 2) To form squads
- 3) To enlist members
- 4) To get subscribers for 'Janajudha' (Journal)

Subject for discussion, should be guided by the following books.

- 1) Grow more food campaign pamphlet
- 2) B.P.C.P.'s circular On 'Grow More Food campaign' week and a book entitled *A new phase of Kisan movement*. At first it is not possible to begin the work in every part of the district. So the primary thing for the defence of the country is to observe the 'week' in villages, unions 'Bhandars' in this way.

Railway line and places adjoining the banks of big rivers such as Badarganj, Tista, Fialchari, Maglalhai, Nilphamari Jatrapur, Saidpur.

- 2) Places where more crops grow. Ramchandrapur, Ulipur, Fulbari Bonarpara. Mithapukur, Palasbari Nageswari, Daroani, Ranipukur, Tushbhandar.

For destroying the stations of the fifth columnists, Nehatu Tushbhandar, Kathalbari, besides Kamalabari as a strong base.

The places where the above 'week' shall have to be observed within this very week.

- | | | | |
|------------------|----------------|------------|---------------|
| 1. Badurgaj | 2. Moghalhat | 3. Domar | 4. Nilphamari |
| 5. Ramchandrapur | 6. Tushbander | 7. Tista | 8. Nehali |
| 9. Kamalabari | 10. Kathalbari | ... Ulipur | 12. Kachna |

The Procedure of the movement was settled in the following ways.

1. To bring supporters and volunteers at the meeting of Krisak Union Samity
2. To decorate the office buildings with posters, flags & pictures.
3. To form and guide squads for explaining the political principle and ideals of the Sabha from a new angle of vision.
4. To teach squads songs of 'Janajudha' to train in music in connection with the 'Grow more food campaign' and to initiate them in its preaching.
5. To prepare posters with extracts from books published by the Krisak Sabha 'Janajudha' journal and take them with the squads.
6. Political circulation of the same among all classes of people.
7. To get an estimate of the area of uncultivated and fallow lands and to send deputations for the same to the Zamindars and 'jotedars' and to reclaim the same and arrange for its cultivation.
8. To collect seeds and to estimate its quantity for cultivation and to hold meetings for it.
9. To get manure, to destroy water hyacinths.
10. To get members of Krisak Samity.

To enlist, subscribers for *Janajudha* to start the union office and to make permanent reporting arrangements.

Below is given the list of quotas:

| <i>Name of Centre</i> | <i>No. of Krishak Members</i> | <i>Volunteers</i> | <i>January</i> | <i>Sqd.</i> |
|-----------------------|-------------------------------|-------------------|----------------|-------------|
| Badarganj | 100/500 | 25/50 | 2/5 | 3/4 |
| Moghalpat | | | | |
| 1st week | 100 | 15 | 2 | 3 |
| 2nd week | 200 | 30 | 2 | 4 |
| Kaliganj Ps | | | | |
| 1st week | 200 | 30 | 4 | 6 |
| 2nd week | 400 | 60 | 8 | 12 |
| Fista | | | | |
| 1st week | 100 | 25 | 5 | 4 |
| 2nd week | 500 | 50 | 10 | 8 |
| Kathalbari | 200 | 50 | 10 | 10 |
| | 1000 | 100 | 20 | 20 |
| Alipur | 200 | 50 | 10 | 7 |
| | 500 | 100 | 20 | 14 |
| Nehati | 100 | 25 | 3 | 4 |
| | 300 | 50 | 6 | 6 |
| Ramchandpur | 200 | 50 | 10 | 6 |
| | 1000 | 100 | 20 | 12 |

| <i>Name of Centre</i> | <i>No. of Krishak Members</i> | <i>Volunteers</i> | <i>January</i> | <i>Sqd.</i> |
|-----------------------|-------------------------------|-------------------|----------------|-------------|
| Domar | 100 | 25 | 5 | 2 |
| | 200 | 50 | 15 | 4 |
| Nilphamari | 100 | 10 | 2 | 4 |
| | 200 | 20 | | 4 |
| Kachua | 100 | 15 | | 3 |
| | <u>200</u> | 30 | | |

Signed Dinesh Lahiri

General Manager
Rangpur District Krishak Samity

The acknowledgment receipt of Rs 40 — has been received by me only.

43: Indulal Yagnik to Bankim Mukherjee (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

All India Kisan Sabha

28.7.43 (*Date of interception*)

Indulal Yagnik, Vice President has sent a letter of resignation dated 24-7-43 (intercepted) from Bombay to Bankim Mukherjee, President, 249, Bowbazer Street and has enclosed a statement to which he says that provisionally the Sabha had maintained an independent anti-Imperialist and Nationalist attitude. But at the Bhakun (Amritsar) session held this year the Sabha had identified itself with the C.P.I. This he says must lead to acute differences on fundamental questions when the Communists try to impose their programme upon the Sabha.

The writer adds that though he is resigning from the party he will continue to strive in his own way for the emancipation of the Kisans.



44: Deb Kumar Gupta to Prafulla Roy (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 586/44
[Bengal State Archives]

1. *Deb Kumar Gupta*

English translation of a Bengali letter B.R. 3946 dated 1.9.43 from *Debda* (1), Maldah, to *Prafulla Roy* (2).

2. *Prafulla Kumar Roy*

*S/o Kunja Behari of Gazaria, Dacca
and of Khulna town.
(External - C.P.I)*

Krishak Samiti Office Ferrigha Road,
Khulna - intercepted at the Khulna P.O. on 3.9.43
ur 21 D.I.R.

3. *Santosh may be identical with B.R.
5800*

Prafulla,

4. *Mani - not known. D.I.B.,
Mukdah May suggest his identity*

Reached here safely. I had to undergo much inconvenience during journey. According to the letter of Santosh (3) I came to the house to *Mani* (4) Babu. I took my meal in his house.

*It appears Deb Kumar who is an
ex-ternee from Calcutta intends to shift
his residence from Khulna to Maldah.
Copies may be sent to I.B., Maldah
and D.C.S.B*

He asked me to put up in the party office and take my meals in his house Now I am going to the party office. I had discussions with a comrade.

Please write a letter giving news of your place. I am very anxious. Tomorrow I am going to submit a notice to the S.P. about my removal. The town appears to be a small one.

Debda.

Signed A. Majid

3.9.43

D.E.O.II

A.K. Ghosh

3/9

D.I.O.I.



45: President, Savana Union Krishak Samity to the Secy. Krishak Seva (dt 2.9.1943) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

Confidential Diary
Calcutta Police

From
ASI Sahadev Karmaker
S.B. Calcutta,

dated 6-9-43

Gist of a Bengali letter dated 2-9-43 bearing the Postal seal of issue 3-9-43 intercepted at Bowbazar P.O. on 5-9-43 – From Ajit Mallick, President Savana Union Krishak Samity to the Secy. Rev. Krishak Seva, 249 Bowbazar St., Calcutta.

Gist of the letters

Here in the letters the writer described as to how the All India Krishak Day was observed on the 1st September by the Krishak samity of Savana Union and says that in this connection a meeting was held under the Presidentship of Dr Ramnath Mukherjee who delivered a short speech. Mr Manindra Basu, Secretary, Dist. Krishak Samity delivered a speech regarding the duties of the Krishaks. Com. Sarat Mullick and Com. Hazari Haldar also raised a proposal on this meeting demanding the release of the anti-fascists leaders and the recall of the warrants of arrest against ex-Secy. Sachin Basu, one of the best leaders of the Dist. The proposal was accepted unanimously.

46: Jagjit Singh to Bankim Mukherjee, (intercepted on 14.9.1943)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 521/43
[Bengal State Archives]

Confidential Diary
Calcutta Police

A.S. Inspector Ramachandra Narayan Sinha,
Calcutta, dated 14.9.1943.

Copy of an English letter dated 10-8-43 (bearing postal seal of issue. G.P.O. Lahore, dated 10 Sept. (43) intercepted at Bowbazar P.O. by A.S.I. Ramachandra Narayan Sinha.

From
Jagjit Singh, 114 Molood Road,
Punjab Kisan Committee.

To
Bankim Mukherjee,
Presdt A.I.K.S.
C/o Provincial Kisan Committee, Bengal
248, Bowbazar St. Calcutta.

Dear Comrade,
We have decided to arrange your tour after the Provincial Kisan Conference. It finishes on 6th October and we continue as follows:

7th Stay at Lyallpur, 8th Lecture at Sangla
9th & 10th stay at Lahore, 11th Montgeomury District
12th back to Lahore, 13th Lecture Amritsar Distt.
14th Amritsar Distt. (Lecture), 15th Rest. 16th Jullandhar
Distt (Lecture), 17th Rest 18th Hoshiazpur, Distt. (Lecture).

Please inform us about your arrival and the number of Comrades who would accompany you. You must reach Lahore by 3rd morning the latest.

Yours Comradly
Signed Jagjit Singh.

47: Mid. Sept. Report of U.P. Kisan Councils meeting (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
(Bengal State Archives]

Copy to Com. Bankim Mukherjee, President, A.I.K.S. Report of the U.P. Kisan Council Meeting at Cawnpore on 25th, 26th, 27th September, 1943.

A meeting of the council of the U.P. Kisan Sabha was held at Cawnpore on September 25th and subsequent days under the presidentship of Com. Mahadeo Narain Tandon.

The resignation of Com. A.P. Tiwari and Dr K.M Ashraf was accepted and Com. S.N. Tiwari and Dr Z.A. Ahmad were coopted in their place. Com. S.K. Tiwari was elected the vice-president in the vacancy caused by the resignation of Com. A.P. Tiwari. On account of the vacancy caused by the arrest of Com. Sultanpuri, Com. Mani Ram Kanchan was taken in as a substitute member.

The secretary then gave a verbal report of the discussions that took place at the Bombay

C.K.C. meeting in August following the resignation of Com. Indulal Yagnik. After discussions the Council adopted the following resolution:

The U.P. Kisan Council deeply regrets the resignation of Com. Indulal Yagnik from the Kisan Sabha and wholeheartedly endorses the resolution of the C.K.C. requesting him to withdraw his resignation. The Council is firmly of the opinion that in these critical days the unity of the Kisan Sabha must be maintained. We can serve the country and the Kisans only on the basis of this unity in the organisation.

The P.K.C. expresses its fullest confidence in Com. Bankim Mukerji, the President and Swami Sahjanand the General Secretary of the A.I.K.S. and appeals to them to leave no stone unturned for maintaining the unity of the Kisan organisation and to get back Com. Indulal Yagnik in the Kisan Sabha at the earliest occasion.

The Council further instructs all Kisan workers to desist from bringing the politics of any political organisation on the platform of the Sabha. The Kisan Sabha has its own politics and policy laid down clearly in its various resolutions. The Council calls upon all Kisan workers to carefully study the Kisan Sabha resolutions and follow the line and the instructions given there in their day to day work.

The Council next decided to call Com. Bankim Mukerji to tour the Province in October or November. It was decided to arrange his tour programme in the districts of Aligarh, Agra, Jhansi and Cawnpore.

The Council next fixed up the election time table for the Province in accordance with the time table adopted by the C.K.C. at Bombay. It was further decided to hold the VI U.P. Kisan Conference from May 7th to 12th, 1944 and the Aligarh comrades were asked to make note of it.

The Secretary then gave a report on the problem of Sugarcane prices. After a general discussion the following resolution was adopted: .

The U.P. Kisan Council fully endorses the resolution of the C.K.C. on the Gur Control order of the Government of India which directly hits the cane growers. While the order seeks to maintain the sugar production in order to fulfil the sugar needs of the country, the method it adopts seriously threatens this object. With the present high prices of grain in the market, the Kisan cannot be induced to cultivate sugarcane unless he is sure that the price that he will get after crushing cane into Gur or selling it at the mill gates will be somewhere near what he will get if he cultivated the foodgrains. The Government must not forget that the cane cultivation needs more labour and money than grain cultivation and in the former case the holding is also held up for a year and a half. That is why the grower wants ample compensation for his labour and expenses. He takes to Gur making only when he does not get the due price at the mill gates. But even this right has been snatched by the Gur control order of the Government of India. Thus it is obvious that unless the cultivator gets a fair price for his cane in this year he is bound to stop cane cultivation from the next season resulting in a most severe sugar famine in the country. Another effect of the Gur Control order is that in the importing provinces the price of Gur is shooting up.

The Council regretfully notes that while such is the critical situation, the U.P. Government is thinking of sticking to the last year's level of annas ten per maund despite the joint demand of both the growers and the sugar mill owner to raise the price higher. The Council warns the U.P. Government that such a course will very severely hit the cane growers, creating a situation which not only threatens a sugar famine the next year but also gives an opportunity to the Vth column to provoke the Kisans and endanger the defence and the security of the country.

The Provincial Kisan Council therefore demands:

- (i) That the Gur Control order be immediately withdrawn and instead of hindering, the Government should help in the manufacture, sale and export of Gur in the Provinces.

- (ii) The minimum price of cane be fixed at Rs 1-8-0 per maund and the announcement be made accordingly in order to set at rest the panic caused by the above order and further to ensure the sufficient supply of cane to the mills.

The P.K.C. calls upon all the Kisan Sabha and Kisan workers to popularise the above resolution among the cane-growing Kisans and through meetings, processions, deputations and mass petitions raise the demands set forth above.

The Council next adopted the following resolution:

The P.K.C expresses its regret at the continued policy of the U.P Government to keep the Kisan Sabha workers in jail. The declared policy of the Kisan Sabha is to rouse the Kisans for the defence of the country. On this August 9th, the Kisan Sabhas throughout the Province took a leading part in preventing the Kisans from going the way of the last year and maintained peace in the country side. Even then the bureaucracy continues to incarcerate old and respected Kisan leaders in jail and does not release them. The Council emphatically demands from the Government the release of all Kisan workers so that in these critical days they may rouse the Kisans to the patriotic task of growing more food and save the country from the evergrowing food crisis. The Council at the same time sends its greetings to all Kisan comrades behind the prison bars and assures them that we shall keep the flag flying. The Council further calls upon all Kisan workers to continually keep up the agitation for the release of our Kisan comrades.

By another resolution the Council demanded the immediate release of Munshi Gajadhar Singh and Com. Kisan Lal Bhardwaj of Aligarh whose health had deteriorated in jail to dangerous limits.

By another resolution the Council drew the attention of the district Sabha to the statement of Com. Bankim Mukerji and Swami Sahjanand regarding relief work for Bengal and called upon them to implement it.

The Council also heard the report of the Secretary on the organisational position of the Kisan Sabha. It was reported that by the end of August about 12000 members of the Sabha had been enrolled, more than 500 volunteers enlisted, about 100 primary units of the Kisan Sabha formed in the Province and Kisan work being revived in new districts like Unao, Etawah etc. The Secretary pointed out that despite these achievements, we were yet far off from fulfilling the A.I.K.S. quota of 30000 members, and the only way to fulfil it is to get active immediately as the *Kharif* crops are going to be harvested. After discussion, the Council called upon all district Sabha to set up their offices in proper order, begin regular meetings of the district Kisan Committees, get badges prepared for Kisan volunteers and become more regular in reporting to the A.I.K.S.

The Council also discussed the G.M.F. campaign run by the Kisan Sabha. It was found that the greatest success had been achieved in Aligarh where more than 10,000 bighas of fallow land were cultivated on the initiative of the Sabha. In Cawnpore also nearly 1,000 bighas of land was brought under cultivation through our initiative. In their places the campaign had not gone beyond the stage of agitation and propaganda. The districts were asked to intensify the G.M.F. campaign for the forthcoming *rabi* crops and to use the campaign not just for telling the Kisans to grow rich but for rousing the patriotism of the Kisan masses in order to save the country. The secretary was directed to bring out a pamphlet on the G.M.F. campaign giving practical details and tips to Kisan workers.

In the end Council heard the report of the Meerut comrades about their work in the canegrowing sheds and directed them to hold a cane growers conference by November to

voice the Kisan demands. It was decided to approach Swami Sahjanand for presiding over the Conference.

Signed H.D. Maiaviya
Secretary, U.P.K.S.

Address on cover:
Com. Bankim Mukerji
President, A.K. Kisan Sabha
24, Bowbazar Street — Calcutta.

48: Extracts from Punjab Police Abstract No. 38 on Kisan conference dated 18.9.1943

File No. 7/23/43 – Home Poll (I)
[NAI]

Another District Kisan conference, attended by 400 persons, was held at Gurdaspur on the 11th and 12th of September. Speaking at this conference, Baba Ishar Singh of Sidhwan (para. 150 of 1940) declared that although India were opposed to the Axis powers, they also desired to put an end to British rule. Nirmal Singh of Chima Khudi (para. 209 of 1940) (a local village with an unsavoury reputation) explained that communists were not pro-Government and added that they aimed at strengthening their hold on the country during the war by forming 'Kisan Committees and guerrilla jathas, and that if India was not liberated after the war they intended to launch an armed revolution. Gudda Singh of Chima Khudi also declared that the Indian axe would one day strike at the root of the British Government, though he urged Indians to resist the Japanese. Finally, Sohan Singh Josh, M.L.A. (para. 339) declared that Indians should aim firstly at the liberation of their country and secondly at the establishment of a Government of workers and peasants. Thereafter, a political symposium was held, at which poems were recited urging Indians to free themselves from slavery. In the second session, Giani Hari Singh (para. 364), who presided, deplored, the activities of fifth-columnist and saboteurs, and warned the audience against the Japanese plan to send Subhas Chandra Bose (para. 339) to India at the head of an invading army. Numerous resolutions demanding the redress of the local agrarian grievances were then passed, after which Sohan Singh Josh denied that Congress was responsible for the acts of sabotage committed in its name, and deplored the prevailing disunity amongst Indians. He extolled Russia, which he said had borne the brunt of Germany's attack single-handed, and concluded by explaining the communist aim to form food committees in villages. Jagit Singh of Lyallpur (para. 251) next criticised Government's economic policy, and appealed to the audience to unite in order to force Government to entrust the work of distributing commodities to the people themselves. Finally, Teja Singh Sutar, M.L.A. repeated that Russia alone had saved the world from Fascist domination and asserted that it was the duty of Indian patriots both to expel the British from India and to prevent their Fascist enemies from enslaving the country. He went on to explain the achievements of the communist party, and concluded by urging the audience to resist Fascist aggression by every possible means. (The audience at this conference, though small, received these speeches enthusiastically).

A Communist meeting attended by 3,000 persons, was held at Khara in the Amritsar district on the 9th of September to commemorate the death anniversary of Baba Ishar Singh Marhana. Speaking at this meeting, Teja Singh Sutaratar attributed the improvement in Allied fortunes of war to the prowess of the Red Army. He urged Indians to defend their country against Japanese aggression and to defend feelings of hatred against the Japanese and Germans 'similar to those already entertained against the British'. Other speakers accused the local police of corruption; after which resolutions were passed urging Government to release political prisoners and to exempt Kisans from payment of land revenue due to scarcity of rain.

49: Extracts from Fortnightly Report from Bihar for the first half of September 1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 79
[Bihar State Archives]

Kisan Sabha – Swami Sahajanand's name occurs once again in the reports. On the 5th of September he addressed a meeting of Kisans in the Champaran district to protest against the refusal of the Bettiah Estate to settle a large tract of waste land in a particular village with local tenants. The Swami urged them to continue agitation and to be prepared, if necessary, to plough the land forcibly. Resolutions were passed demanding the immediate release of Congress leaders and the cancellation of the Central Government's Gur Control order'. Jamuna Karjee, for long one of Swami Sahajanand's chief lieutenants, has resigned from the party. The resignation is due to the growing predominance of Communist influence in the Kisan Sabha, a development which for some time past caused considerable concern to the Swami himself. While, as a member of the Kisan Sabha, Pandit Ram Chandra Sharma, Chairman of the Gaya District Board, professes to have connection with subversive activities, his son, Ram Sewak Singh, has recently been convicted and sentenced to imprisonment for being found in possession of such literature.

50: Extracts from Fortnightly Report from Punjab

File No. 7/23/43 – Home Poll (I)
[NAI]

PUNJAB
2nd half
Sept. 43.

Kisan Sabha Activities

(b) **Communists** – Communists continue to be engaged in strenuous attempts to extend their influence, though the claims made by them regarding the enrollment of large numbers of

fresh members or the formation of extensive Food Committees do not bear close examination. The propaganda conducted at their meetings contains much denunciation of Fascism, but it also betrays considerable hostility towards Govt; and there is little attempt to disguise the fact that communists expect to pit their strength against Govt. at the end of the war, when the danger of Fascism will be a thing of the past, and when the accumulated resources of the party will be available for an attack on 'British Imperialism'. On the whole, however, the public response to communist propaganda is lukewarm, and the prosperous condition of the peasantry affords communists little opportunity to season their political preaching (in which little genuine interest is taken) with the exploitation of agrarian grievances. However, some progress is being made in enlisting Kisam members, and although attempts to gain control over sugar and kerosine oil depots have so far made little headway, there is no doubt that the party has achieved at least some gains both in the fields of labour and agriculture since the ban on it has been removed. Meanwhile, further progress continues to be retarded by the never-ending disputes between the Communist and Kirti groups; as before; these are caused principally by rivalry over the control of funds.

51: Report of the speech of Sahajanand Saraswati (dt 18.10.1943)

Govt. of Bihar Pol (Spl) File No. 604/1943
[Bihar State Archives]

One Sachidanand Tiwary of the village was voted the chair, to preside over the meeting. His election to the chair was followed by a recitation of a Hindi song, by two minor boys of the local school, welcoming Swami Sahjanand, who arrived from Bihta, on the invitation of the conveners of the meeting.

The object of the meeting and inviting the Swami to address the same was to get a guidance from the Swami as to how the people of the locality could get settlement of the lands covered by the *Sareya man* 1, which was under the zamindar of Bettiah Raj, and was lying uncultivated for years, but the Raj was said to be contemplating to turn the said lands into a big Farm. The people of the locality had submitted a number of petitions for settlement of the said lands, but were rejected, by the Raj manager replying that the lands were kept reserved for the purpose of shikar.

Swami Sahjanand addressed the meeting and said that inspite of the fact that no change had occurred to the area of the land; it was the same as before war and there was no failure of the crops, rather according to the Government report the condition of the crops was good. Yet the people were starving, due to the dearness the foodstuffs. If this problem was not solved, the time would come when the human beings would be compelled to eat up each other, to satisfy their hunger; there would be dacoities, there would be quarrels amongst the members of the families. As such it would disturb the public peace of the country.

To cultivate lands, was not the business of the Government or the Government officials. It were the kisans who could do it, but they had not the facilities to do so. They should be provided with the proper arrangements. They should be given proportionate lands to cultivate

and specially those who were without it or those who had such a small area of land with them from which they were unable to produce crops which could be sufficient to maintain their families after payment of the legal taxes and other liabilities. They should be given seeds and other agricultural expenses, incurred on the cultivation.

In these days when the Government was also eager to see the people growing more food and at the same time when there was a large area of lands with the Bettiah Raj, Darbhanga Raj and other zamindars which was lying uncultivated, those lands if given to the poor kisans, they could produce crores of maund of grains, out of them. Similarly if the landlords, covered by the *Sareya Man*, were settled with the kisans of the locality, who were poor and either had no lands, or had insufficient area of the land to maintain their families, then it would give such people a great relief.

He explained to the audience that they had the right to live and thus required food and clothes and other necessities of life. The lands were the creation of the nature. The rajas, maharajas or the zamindars had not brought them with their birth, if they were not given the lands, they should be given some other work, to live upon or it would mean that they should starve. But no Government or any zamindar could dare say so. They (zamindars) were not inclined to give them (kisans) lands, as they were afraid of them and their awakening which was coming in them from day to day.

He advised them to hold meetings in the neighbouring villages concerned and decide that the lands of the Sareyaman should be settled with them, send their resolutions to the Raj manager and the District Magistrate that they wanted to cultivate those lands after the rainy season. If there was none to listen to them, they should all be prepared to till them with their ploughs. Then the police, the S.P. and the District Magistrate would look into the matter and would compel the Raj to settle them with the rayats (kisans). He cited Reora fight of the kisans and their success in that fight, to encourage them.

Inviting their attention towards the question of freedom he said that the people wanted their own Government in their country, so that the members of the Government cabinet should look to their comfort and work according to the wishes of the people of the country. It would be possible when those members were appointed by the people. But at present there were lacs of men, who were born in this country but no land or house in this country and had to pass a vagabond life. If they had land, their zamindar could dispossess them any time. Such people had no charm or a spirit of sacrifice for their country and so it was impossible for them to bring about freedom.

Referring to the Civil Disobedience Movement of the year 1930-32 he said that the people were successful in bending down the British Government to some extent, but since it was not the joint attempt of the people, they had to suspend it. The British Govt. against which they wanted to fight had no rival in the world, with respect to wisdom, strength, bravery and shamelessness. The people were like the donkeys and the British Govt. was sitting tight on their back like a washerman and it was not easy to shake it off from their back. It would only be possible when the poor masses of the country could combine together in this attempt. But it could only be then if they had realised that their prestige, fooding and clothing were all dependent upon their lands. In that case they would be prepared to die for their country.

In this connection he explained to them the history of the revolution of the Soviet Russia, hinting them as to how the kisans were maltreated during the reign of Czar and as to how they all combined together and ruined the Czarism, after which the people were enjoying all the comforts of the life with no distinction of rich or poor. He also informed them with what

bravery and perseverance, the Soviet Russia fought against Hitler. No power of the East could ever dream of it, were doubtful to give them any help, in the beginning.

He cited another example of the spirit and bravery of China with which the Chinese fought against Japan. He gave them to understand that the Chinese and the Russians had realised that if their enemy was victorious over them they would lose their liberty. Similarly they should have a spirit to fight against Japan and Hitler if they happened to invade their country.

Proceeding further he said that the food problem was the most important thing these days. The Government could solve it, if inclined to do so. If the Congress leaders were released, they could solve it. But the British Govt. would not allow them to come out of the jail at present. The Government was under the impression that as a result of the repression, following the disturbance of the last year, the people were terrorised and the congress leaders were in jail and hence there could be no apprehension of any inter disturbance in the country. But he would do it when there was such apprehension. Whether the Govt. cared to do it or not, it should be the duty of the people of this country to see that their country's peace was not disturbed. They would have to see that every inch of the uncultivated land in the country should be cultivated with the exception of the grazing lands. He advised the audience to form a committee to launch an agitation against the Bettiah raj, for the settlement of the lands covered by the *Sareya Man*.

Proceeding further he dwelt upon the cane problem. He said that the last year the Government had fixed annas eight, as the price per maund of the sugar cane and when the kisans began to stop supply of the sugar canes to the mills and prepared molasses, then the Government raised the price to annas ten. But this year the India Government had issued the orders to control the manufacture of molasses. By this no one was allowed to transport molasses. If the Government had not cancelled these orders, it would discourage the cultivation and to prepare molasses of their little cane production, if they had any. They should cultivate more paddy instead of the sugar canes. They should not accept any price less than two rupees per maund of the sugar cane, if they had cultivated it for supply purpose. If the Government not inclined to give them Rs 2 per maund of the sugar canes, then there would be a shortage of the sugar, but on the other hand the Government was in need of a great stock of sugar for their forces and hence the Government would probably accede to the demand.

The swaraj talk was much talked off in this country, but it was not so at present . . . [words missing out in the original — Ed.] The people were terrorized. They wanted a swaraj like the one in Russia. They did not want power in the hands of the capitalists. They were at present deprived of the freedom of speech and press. If they were allowed this freedom, then they could make themselves felt by the Govt. and the zamindars. But since the foreign govt. was sitting on their head, their troubles could not be removed. But this was not the opportune time to fight against the British Government. The Govt. had grown sufficiently strong and had made friendship with Russia and China. If something could be done to bend the Govt. it was the time when she was engaged in Singapore fight. It was true that they wanted to turn out the foreign Govt. from this country, but they could not do anything when the congress leaders were in jail. However, it was wrong, to think, to fight the Govt. at this time. The last year's repression had thrown the country back by twenty years. The kisan Sabha never liked the disturbance of the last year.

Proceeding further, he said, that they would continue their attention to turn away the British Government from this country, by fighting against. By fighting he meant, to prepare the people against the Govt. But he did not like that the British Government should be replaced by the

Japan Govt. Therefore, he wanted that the congress leaders should be released, who after coming out of the jail, would move about the villages and advise the people not to hoard the grains, kerosene oil, matches etc. and in that case the things would be sold on cheap rate. Side by side they would have an opportunity to prepare them for the freedom of the country.

In concluding his speech, he advised them to agitate for the settlement of the lands under the *Sareya Man*, jointly and with united efforts irrespective of caste and creed. Advised them to enrol the members for the Kisan Sabha and to strengthen it. They should open the office for the working of the Kisan Sabha and subscribe for a news paper, to keep them in touch with the news of the time.

The meeting adopted the following resolutions –

1. Requested the India Government to cancel the Gur Control order in absence of which there was a danger of the shortage of the sugar and demanded that the price of the sugar cane per maund should be fixed in comparison with the food grains and other food stuffs.
2. Resolved that the lands under the *Sareya Man* and Majhera jungle should, as soon as possible be settled by the Bettiah raj, with the kisans and the *khet mazdur* (agricultural labourers). If the Bettiah raj fails in this, then the Government should see that it is done.
3. Requested, in view of the present situation of the country, for the immediate release of the congress leaders, to control the situation of the country, without them, the country could not advance forward. Further demanded the release of the leaders of the Champaran district, namely Kidarmani Sukul, Akhchhaiba and Namamis Missir and Gopal.

Ramsarup Bind of the village, an organiser of this meeting, told them, that since the Sareya Man and Majhera jungle was going to be turned into a Farm, by the Bettiah Raj, he invited Swami Sahjanand in this meeting to guide them as to what to do, and how to get the lands under them, settled with the kisans. That if they all unitedly were prepared to till these lands, there was no power to stop them. They should be careful of the agents of the Raj, who would try to discourage them and mislead them.

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1. *Sareya Man* is located in the Bettiah Sub-division of Champaran district (today Bettiah Sub division is a full fledged district called West Champaran) It was a large uncultivated tract with many lakes, where migratory birds used to come in winter for which reason it had been reserved by the Rajah Zemindar of Bettiah for Shikar. Towards the end of the 19th century the Zemindari went to the Court of Wards. The lake later dried up; the land remained uncultivated. Evidently the manager of the Court of wards still hoped to reserve the land for Shikar, while the peasants were anxious to encroach on it for cultivation [The Editor is obliged to Prof. G.S. Mishra and Ratish, (a Post Graduate Student from Bihar) – for helping in getting this information.]

52: Extracts from Fortnightly Report from Bihar for the first half of October 1943

Govt. of Bihar, Freedom Movement Files – 1943 – File No. 79
Bihar State Archives.]

An emergent meeting of the Provincial Kisan Council was held at Patna at which there was much discussion on the subject of communist influence in the Kisan Sabha. A compromise

was finally arrived at whereby the Communist members of the party agreed not to use the Kisan Sabha platform for Communist party of India propaganda and a committee was formed consisting of Swami Sahajanand, Jamuna Karjee who has been persuaded to withdraw his resignation, Januandan Sharma and Karjanand Sharma to see that the compromise is observed and to tighten up party discipline generally. Kisan meetings have been held for the purpose of protesting against the Gur Control order and resolutions have been passed demanding that the price of sugarcane be increased to Rs 2 per maund.

53: Secretary, U.P Kisan Sabha to Swami Sahajanand Saraswati (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/43
[Bengal State Archives]

Intercepted letter — Police Report

17A Johnstonganj,
Allahabad.
October 28, 1943

Dear Swamiji,

Bande,

I hope you received my last letter from Muttra dated 23.10.43¹. Therein I requested you to inform me by wire the dates that will suit you for presiding over the cane-growers Conference in Meerut. The dates were between Nov. 7 and 12. On coming back to Allahabad today, I found an S.O.S. from the Meerut comrades saying that the Kisans will be very busy in sowing in the first week of November, and then the Ganges bathing day of the famous Gurhmukteshwara fair falls on November 11th. So they suggest that the Conference would be very successful if held after the 2nd week of November. I am afraid that it may be rather late. Anyway please let me know your suggestion immediately by wire. If 16th, or 17th, of November will be right then please let me know. In case you want an earlier date please tell me so. I may inform you that the Sugar factories start working in the western districts after the 2nd week of November.

In our Council meeting of September 26th we did decide to hold a cane growers Conference but did not give any particular name to it like U.P. and Bihar Canegrowers Conference etc., since we were not sure as to how many delegates shall we get from the various cane centres. If there is a possibility of getting representatives from Bihar then certainly we can give it that designation.

On coming back to Allahabad after an absence of nearly 3 weeks I found your angry letter dated 23.10.43 I quite realise the reasons for your wrath and believe me I take all that you have said in the spirit of younger individual being taken to task by a senior comrade for negligence. Ultimately, you are angry because you want to save the Kisans, give yourself no rest and pained when you think that others are not doing their job. I will, however, try to show that beyond the mistake of not keeping you informed as regular as we should, we have tried to do as much as we could possibl^y do.

Let me at the very outset tell you that out of the 14 districts where we have district Sabha only Meerut and Basti lie in the Sugar belt where the problem of cane prices is really of immediate importance to the Kisans. In Aligarh Agra, Jhansi etc. the Kisans grow cane mainly for their consumption and for the village markets since there are no mills. Now immediately on coming back from Bombay I wrote to both these districts, sent them copies of the Bombay resolution and gave them the tips for agitation. That is why you hear of meetings etc. in Basti. In Meerut too the work began immediately and they started preparations for the Conference. They had to face tremendous difficulty because of the very bad name left behind by Mr Keshav Gupta. You will realise it better when I tell you the horrid traditions that he has left behind. They have held meetings, sent letters etc. to the higher quarters and have ultimately defeated the opposition and are going to hold the Conference. The Basti Kisan Sabha is very weak, confined only to Walterganj area and could not possibly undertake the responsibility of holding an Eastern Districts Conference as you suggest. Then I will certainly request you to keep in mind that the Kisan Sabha movement in U.P. is yet in a very backward stage and certainly cannot do even a part of what Bihar the founder of the A.I. Kisan movement with its glorious traditions and with a leader like you can do.

So far as meeting the brazen bureaucrats are concerned, we have done that too. The resolutions of C.K.C. and the U.P. Kisan Council were duly forwarded and the cane commissioner also contacted. But an idea of how unhelpful this august being is can be had from Pandit Karji who has met him. From Muttra I instructed Com. Brajesh Singh to go and meet him again and I am awaiting his report. But the final work lies with the Sugar Controller and I am attaching for your information a copy of a circular letter that he has recently sent out.

With regard to the press publicity, local Hindi periodicals have been writing about the matter no doubt, though not as much as they could have if systematically approached. Of the English dailies *The Pioneer* belongs to Sir J.P. Sinha and it does not publish anything about us as part of its deliberate policy. Mehta Krishnaram of the *Leader* has been approached and we hope that he will write an editorial note. An article has been sent already to all the leading dailies of the province.

Now about the price of sugarcane. Please allow me to correct you. The Council meeting demanded Rs 18 per maund as the minimum price. In the statement that appeared in the papers under Com. Tandon's and my name there was a mistake. We gave the statement at Cawnpore and then I left for Aligarh and he for Agra. Therein we had placed the demand of Rs 1/8 per maund and 1/4 appearing is entirely the mistake of the API. man there. Now why we placed Rs 18 as the minimum price? At Bombay the demand of Rs 2 per maund was put forth on the assumption that when we place the demand as high pitched as that then we may hope to get the price somewhere near 1- or 12- per maund. On return from Bombay we ascertained that for every two annas increase in the price of sugarcane the price of sugar will be raised by nearly Rs 2 per maund. In that case what will happen to the vast number of consumers — this problem was worrying us. Just then Pt. Karjee came to the Sugar Board meeting at Lucknow and placed the demand of 1/8 — per maund. We took the hint and hence the resolution of our Council on 26th September demanded 1/8 per maund. This is the entire story. Yes, we were quite conscious of the attitude of the Millowners and they have been approached at Meerut to support our Conference and I am sure they will give their fullest cooperation.

I have tried to place before you all the facts and I earnestly hope that you will realise that

our only mistake lay is being irregular in reporting to you. For the rest we did as much we could with our organisational weakness and immaturity.

Your angry letter was really a shock for us. It has certainly served the useful purpose of making us more alert and I earnestly hope that your next letter, written in the light of the above will set at rest the qualms of conscience that your angry note has created here.

Expecting an early reply,
with profound regards

Yours fraternally

Secretary
U.P. Kisan Sabha.

Enclosure I

Circular Letter of the Sugar Controller of the Govt. of India to the Provincial Govts

'In view of the fact that the demand for sugar has greatly increased for obvious reasons and also as a result of the controlled sugar being one of the cheapest articles of food, it is vital that the sugar factories should be given every possible facility to produce the largest quota of sugar they can during the next season. It will therefore, be greatly appreciated if plans are worked out in advance.

'It is necessary that steps should be taken in good time to ensure ample supplies of cane to the factories at reasonable prices. As you are aware, cane prices are fixed in the provinces of U.P. and Bihar and sugar prices have in the past as well as during the current season been primarily based upon the amount paid to the cane growers in these two provinces. The season 1942-43 has been perhaps the most profitable season for the sugar industry and in view of the lower trend of prices for all commodities there does not appear to be any reason whatsoever to revise the sugar prices at any rate in an upward direction. As a matter of fact, the representatives of the U.P. Government, the province most interested in the production of sugar suggested that a price of nine annas per maund of cane would be adequate. In the circumstances measures will have to be adopted whereby the factories secure the necessary supplies of cane at a price not exceeding the minimum price fixed in the U.P. and Bihar which is not likely to exceed 10 annas per maund for the next season, 1943-44.

According to the present schedule of prices, the cane price must not exceed 10 annas standard maund. In other words, it is necessary that adequate steps should be taken in good time with a view to maximizing the production of factory sugar in the local areas and not allowing the absence of control on Gur prices to affect adversely the more economic and important processing of cane into sugar.

Enclosure II

Address on cover: Com. Bankim Mukerjee,
President, A.I. Kisan Sabha
249, Bowbazar Street, Calcutta.

U.P. Kisan Sabha

17A Johnstoneganj, Allahabad,
28.10.43

619

To
Com. Bankim Mukerji
President, A.I.K.S.

Dear Comrade,

Received your letter dated 17.10.43 on returning to Allahabad after a long absence. I hope you have received my last letter from Muttra. It won't be possible for us to arrange your tour. The main reason is that the Kisans would be very busy in sowing. Another reason is that in the districts where we want to go, malaria is rampant in the form of a virulent epidemic and almost 90% of the population is confined to bed, including a very large number of our own workers. Myself and Com. Garoesal recently toured in Aligarh and saw things with our own eyes. In fact I caught the infection and was confined to bed in Muttra for 3 days with high fever. Your tour would be possible after you return from the Punjab. Please inform me the dates when you will be free from Punjab so that the intimation may be sent to the districts from now in order that they may start their preparations. We had decided to include Aligarh, Agra, Jhansi and Cawnpore in your tour programme. Now that you will be coming here after your Punjab tour, we may include some more districts. Please do inform me of the date from which you propose to begin your U.P. tour and the total number of days that you want to give here, as soon as you can. Also please let us know any special arrangements that has to be made in connection with your tour etc.

I am attaching for your information an article on the 'Sugarcane tangle' Since you will be going to Swamiji for a day or two before you go to Punjab, I want to tell you certain things about which Swamiji is to talk to you. On 23.10.43 he wrote a most angry letter to me the burden of which was that we in U.P. are sleeping over the sugarcane price question whereas he is carrying on a whirlwind campaign in Bihar. His letter was in a very angry tone and in fact rather quite provocative. I have written back to him without being provoked and a copy of my reply is being attached herewith. Please do go through it before you go to Bihar.

Here I would like to point out to you one thing. The typical Kisanite that he is, Swamiji does not bother as to what happens to the rest of the consumers all over the country in case the price of sugarcane is raised. In this respect we were wrong in allowing Swamiji to have his way at the Bombay C.K.C. in fixing the price of Sugarcane at Rs 2 per maund. For every annas 2 increase in the price of each maund of sugarcane the price of sugar will be raised by nearly Rs 2 per maund. While it is true that sugar price has not shot up in this period of general dearness and can certainly bear a rise in its price in view of the inflation of currency to tremendous proportions, there certainly has to be a limit. This the old man simply misses. And then whereas he scolds me for going below the price level fixed at Bombay his Chela Jamana Karji placed the demand at Rs 1/8 at the Sugar Board meeting at Lucknow. I was going through his 'Munkar' just now and I find that he himself at one place pleaded for Rs 1/8 as the minimum price. I have written all this just to keep

you informed of things in order to enable you to give him the necessary answers at Bihar if he raises the question at all.

Please do inform me of your tour dated in U.P. soon.

Lal Salam.

H.D. Malaviya
Yours Fraternally,

1. Not printed.
2. Not printed.

54: Home Department Survey (July-Oct. 1943) the Communist Party in the Kisan Sabha activities (extracts)

File No. 7/23/43 - Home Poll (I)
[NAI]

'Communist Survey'

Kisan Sabha

4. The communists also suffered some loss of face at a well attended session of the Central Council of the All-India Kisan Sabha in Bombay from August 21st to 25th. The Council met principally discuss the resignation tendered in June last by Indulal Yagnik, Vice-President of the Sabha, and his complaint in a press statement that the Sabha had become a mere instrument of the Communist Party. The communist members of the Council were primed with instructions to 'win over' the general Secretary, Swami Sahajanand, who in a letter to P.C. Joshi dated July 12th had expressed his resentment at the claim of 'People's War' that three lakhs of Kisans 'stood behind' the 'pro-war' policy whereas, he affirmed, thousands of Kisan Sabha members had never even heard of the Communist Party of India. At the Bombay meeting the Swami backed up Yagnik and threatened to resign as well. The communists therefore adopted a conciliatory tone and, in their anxiety to appease Sahajanand, passed a resolution containing a request to Yagnik to reconsider his resignation, although they had at heart no desire to welcome him back into the fold. The same resolution denied that the Kisan Sabha was identified with the Communist Party and went on: 'The Kisan Sabha has always remained and does remain an independent mass organisation of the kisans with an independent policy of its own and is not deflected from that policy on any account'. The Communist Party of India has never claimed in so many words to control the A.I.K.S. but its published statement of its following in the Kisan movement were designed to create such an impression and it must have grieved the communist leadership sorely to have had to destroy the illusion out of deference to the Swami.

5. Sahajanand, however, not content with this moral victory returned to Bihar determined to give practical effect to the resolution and to 'demarcate the identity, policy, principles and activities of the Kisan Sabha from those of the Communist party of India'. Early in September

he took up the cudgels again by announcing that the Sabha differed with the Communist party of India in respect of the 'people's theory, the self-determination' issue, support to Coalition Ministries and the communists' misuse of the term 'fifth columnist' to describe 'honest Congressmen' and 'peaceful satyagrahis'. Things came to head towards the end of the month when the Bihar Kisan Council met to discuss the resignation tendered by Jamuna Karji, M.L.A., on the same grounds as Indulal Yagnik. The Bihar communists gave way and agreed to evolve a compromise. Eventually in October the following tentative formula was drawn up by Sahajanand in consultation with S.G. Sardesai:

Resolved that the members of political parties who are Kisan Sabha functionaries or the representatives or responsible members of the Sabha are to confine their activities strictly within the four corners of the policy and resolutions adopted by the Sabha from time to time and are not to popularise their party policies from the Kisan Sabha platform or in such a place of fashion as to confuse the independent identity of the Kisan Sabha with that of their party and also should refrain from collecting funds for their organisation or selling their party literature. These activities may be conducted by such persons from their independent party platforms and in a manner that will not create any confusion regarding the policy and decisions of the Kisan Sabha.

Sahajanand is waiting to see how the formula works in practice before he gives it his formal approval and he has also sought Yagnik's advice.

6. One thing is clear. The communists are not yet sufficiently confident of their hold on the Kisan movement to terminate their uneasy alliance with Swami Sahajanand whose reputation as a Kisan leader stands far higher than that of any of their own representatives. Nevertheless, there is no question but that the communists have the whip hand in Bengal, Andhra, Kerala and the Punjab where the Kisan movement is comparatively more developed. The Bengal Kisan sabhaitees, for example, are claimed to number 105,000 (as compared to 12,000 in the U.P. the majority of whom are in one district), and the party is confident that Bengal will fulfil its 'quota' of 350,000 members before the end of the year. These impressive figures, however, have to be viewed in the light of recruiting methods employed by the communists in the Punjab, where Kisans are asked to subscribe one anna to Party funds which they willingly do, often by way of charity, without realising that they have thereby 'joined' the party.

Central Committee Meeting

7. Immediately after the Central Kisan Council meeting concluded, the Central Committee of the Communist Party of India went into session in Bombay for nine days. Party publications have been rather reticent about the nature of the proceedings, but secret reports suggest that the pervading atmosphere was one of despondency. The principal speakers, P.C. Joshi and Dr Adhikari, admitted that the Party's political programme and its practical attempts to deal with the food situation had evoked but a poor response from the public, and that the party had not yet emerged victorious from its campaign against the 'fifth column' led by the Congress Socialist party. They accused the Provincial Committees, with the exception of Bengal, of lethargy and inefficiency but they confessed that the work of the PolitBureau and the Central committee left much to be desired, particularly in interpreting policy to the rank and file.



55: Bankim Mukherji to Harsh Dev Malaviya (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Criminal Investigation Department,
Special Branch
December 1, 1943.

Copy of a special Branch Officer's report dated 27-11-1943.

It is learnt confidentially that Bankim Mukherjee, M.L.A., president All India Kisan Sabha, Punjab Provincial Kisan Sabha, 114 McLeod Road, Lahore, has sent a letter in English to Harsh Deo Malaviya, Communist Party Office, Parade, Cawnpore. Copy of the letter is given below:

Dear Comrade,

Dearness Sub-Committee meeting at Calcutta will be held on 8th and 9th December, 1943. I, therefore, have to leave Lahore for Calcutta on 4th December. Punjab programme is unfinished.

Dearness sub-Committee again meeting some time in January at Delhi. I can take up the U.P. Programme at that time. I shall write about that to you from Calcutta.

I had a talk with Sir J.P. about sugar and Gur Control. Department is very strong about not allowing prices of things to go with the prices of Food grains and to help the inflation spiral. The fixed price of sugar is annas ten — H.C. Mehta was very adamant about it.

The Food Member however is willing to fix the rate at annas 12; after long arguments he said that the decision is not irrevocable it can be changed if you can prove that Kisans would be actually very hard hit. You have your figures no doubt, I am looking to it. My Department after consulting various interests and calculating the cost think that ten annas is not unfair. From this proposal, Sir Srivastava knew that in U.P. pre-war days sugarcane can be produced at three annas rate, so — 12 annas is quite O.K.

Swamiji has given me the cost of sugarcane produce and of gur but he has not given comparative figures that is pre-war days, last year and this year. If you could quickly give me the costing figures of the various sub-head given by Swamiji e.g. (i) Hiring charge for one pan and cane crusher (ii) Bullock charges (iii) Labour charges; (iv) Miscellaneous charges and (v) Marketing charges and show the peasants could do at the control rates of sugarcane in the previous year I would send them to the Food Member.

Greetings.

Fraternally yours,

Signed Bankim Mukherjee.

Copy forwarded, for information, to the:

- 1) Home Secretary to Govt. United Provinces, Lucknow.
- 2) Asstt. Director (R), I.B., H.D., Govt. of India, New Delhi.

- 3) Asstt. to D.I.G., C.I.D., S.B., Punjab, Lahore
- 4) Deputy Commissioner of Police, C.I.D., S.B. Calcutta.
- 5) Central Intelligence Officer, U.P.P. & Ajmer, Lucknow.

Signed
For Superintendent of Police
C.I.D., Special Branch.

56: Translation of a Marathi letter seized in Madras from one Kulkarni (A CSP supporter)

Govt. of Madras, U.S. Files, File No. 2/1944

[INA]

[Note: This document dt 30.3.1943 is an enclosure to the letter of Supdt of Police, Madras Presidency to the Chief Secretary, Govt of Madras dt 18.12.1943, this latter document is in Chapter I – Sect. A, Doc. 88 – Ed.]

Appendix C

Translation of a letter in Marathi seized from Kulkarni.

Part 1.

30-3-43

Why this Province Lags Behind

For two weeks after 9th August, this province showed its resentment in a good manner, but after that, it was all quiet. This lethargy may be accounted for in many ways. For example, Mr Rajagopalachari's anti-Congress propaganda and subsequent resignation from the Congress had a bad effect on the people. Then the people were in a dilemma about the leadership, Congress gave the clarion call.

The office acceptance by the Congress, so far as this province is concerned, has not proved helpful to the people. From the time of the Congress ministry, a kind of lust for office has arisen amongst the Congress people who were in the forefront in Congress field. They were thinking that if youngsters are given chances to come forward, they (elderly Congressmen) will be nowhere and thus a systematic crushing down of youngsters and their spirit was wrought out by the elderly people. Naturally those, who wanted to do something for their country had no other way then to join the communist party. The result was that the Communist Party in this province has become stronger than in other provinces.

It will be no exaggeration if we say that the Andhra leaders are known better in other provinces (than in their own province). The Congress leaders never tried for a mass contact. Sri. T. Prakasam is of course an exception to this. Andhras revere him much. He sacrificed his all for the people, so much so, that even for a petty sum of Rs 5.5 or 10, he has now to request his friends. The popularity enjoyed by T. Prakasam was always the cause of hatred of Rajaji towards Prakasam. He (Rajaji) tried to form anti-Prakasam group but with all that, the people revere Sri Prakasam all the more.

The Congress people who kept up their position by party cliques and by the blessings of Rajaji intentionally managed to keep aloof from the people. They thought themselves to be legal successors of Congress and Mahatmaji, due to which they thought people would follow them automatically. But the masses however uneducated they may be can find out their own leader. This fact was ignored by the elderly Congressmen. Due to some personal differences and specially with a view to separate him from masses, these people (elderly Congressmen) have thrown many obstacles in Prof. Ranga's way. They encouraged Communists in order to eliminate Ranga's leadership. They were unaware of the fact that by so doing they were digging their own graves. And the result was clear, Congress had no strong hold at all now on masses. Whatever people did in the first two weeks was spontaneous and no organisation can be given the credit for that.

After People's War

Conditions banged to a great extent after the communist party gave the call of '*People's War*'. Honest communists never liked that stand. They began to desert the party gradually. But the deserted people too were not organised in time. Immediately after that, August movement commenced. Leaving aside some staunch communists, youths in general are anti-communist. They want to do something for the movement or at least something to wipe out the communists, but they are at a loss to know what to do. There is some meagre organisation in Kistna and Guntur districts but it is chiefly in negative; unless something positive is supplied, this organisation cannot live long and be efficient. Congress Socialist Party can supply this, but at present the party organisation cannot be done openly and so it should guide it. The Youth are accustomed to think on international basis and this international stand can be duly elaborated by the Party (C.S.P)

Kistna

I came here on 7th March. The first week passed in securing information about the background and in meeting prominent men. Then I started on tour in the district along with a comrade. Before you came here some of the letters were caught by the Police. They arrested a man for that. After that, a second letter also appears to have fallen into the hands of the police. After this nearly 10 Youths were arrested. They were troubled to give out some information about me but nothing came out. The eleven people who were arrested might have been of great use.

Including Masulipatam and Gudivada, the prominent towns in the district, I visited some villages. People of different opinions – old and new – were approached. Collected information about the situation in the Andhra province. Convened a meeting of all prominent workers in the district and formed a committee to carry on the work of the congress in the district. Hereafter the work in the district will be done through this Committee. This Committee consists of new as well as old workers. If some monetary help is given first to begin the work, it is possible to get some help afterwards from the people. There are 9(nine) taluks in this district and it is planned to appoint one man for each taluk who should submit his fortnightly reports to the District Committee. We are collecting the men required for the purpose. National week preparations is but a temporary one. Further programme is of course awaited.

Sri Sambamurthi has begun his anti-propaganda which is proving injurious. The problem of '*Himsa*' (violence) and '*Ahimsa*' (non-violence) is troubling the old people. At Bezwada I tried to clear off the misunderstandings of some people.

Guntur

The situation is very complicated in this district. There are many small groups here based on individual opinions and feelings. In this district there is a fellow name Bhayankarachari of the Cocanada Bomb case. He says that he met Naik and Mehta. He is levying his pro-Japanese stand on them. He continued the same here and on Madras students. I cleared off the misunderstandings and am planning to eliminate him through other ways. The man, though brave once, is not at all reliable now. May prove harmful to the cause. Inform this to Naik.

I met the wife of Prof. Ranga. She has some personal misunderstandings about Mehta. I could not clear them as I had no previous knowledge of them. But she is in favour of our party and its work. Due to household responsibilities she will not be of very much use in practical field. Saw his brother also. In favour of the movement - but instead of executing programmes at first, he suggests that the immediate grievances of Kisans should be solved in the beginning by legal ways and thus pave the way for bigger programmes.

In this district a committee has been informed and instructions were given for appointing taluk people. There is little hope of getting monetary help from the local people, because the people who were previously in the field had collected good amount but it was spent for personal needs due to which a great misunderstanding about money is created. Some suggested to see Sir. Vijaya, but I refused. Decide it yourself and inform.

There is a group in this district who wants to undertake disruptive (sabotage) activities but they have to live bad days. I suggested to them not to do anything unless some programme is chalked out and received from you but I don't think that I will be successful in upholding their eagerness. Decide about them. They are in need of monetary help.

Nellore

Prof. Ranga's practical field: Some part of this district is owned by Zamindar and some is Ryotwari. In Zamindari area, Prof. Ranga has created some consciousness. There are about 800 villages. Poverty and Zamindari atrocities viz. extra taxes etc. have created the disaffection. In some villages the village officers too are against the zamindar and consequently against the Government. But the district being poor, money for organisational work should be supplied from outside. Before taking zamindari questions, inform about our stand regards Zamindars.

In Non-Zamindari area, there was already a committee. I kept the same as the Youths are ready to cooperate with it. In this part, previously Hindu Muslim riots were common. At present there is no ill-feeling between Hindus and Muslims, but there are some youths who were trained in the riots who are favourable to the Movement. There is a possibility and scope of undertaking (great work) big programmes if these youngsters are organised.

Some suggestions received for the programme.

1. Satyagraha and Jail filling according to old programme.
2. To arrange batches of 10 volunteers in each taluk for propaganda. They should address mass meetings. They will be arrested somewhere at last but due to this propaganda some consciousness will be created and we will get some more people for that work.
3. Each district should have a squad of 60 youths ready to face death. Propaganda and other programme should be continued but when time comes those 60 people should undertake big programmes and if again some wave of upheaval comes just like 9 August, this squad should guide the people.
4. Salt Satyagraha for Nellore district.

Decision in regards the following items to be arrived at:

1. How much monetary help is possible from you.
2. What should be the policy as regards disruptive activities (sabotage)
3. Practicable and preliminary programme for all districts.

Appendix D

Translation of a Manuscript Telugu report on the conditions in the Province.

Conditions in the Province

The Provincial Organiser Chowdari and myself, at the end of our tour in Ceded districts, met Pakala Naidu in Chittoor and talked with him. Intimation was since received that Pakala Naidu (Venkatramanaidu) was also arrested. The Provincial Committee promised to give funds to Royalaseema specially. It is not known to whom that amount could have been given. I told them that the money relating to your district should be handed over to you and that the Royalaseema organiser should see you without fail. But Chowdari went to Guntur and said that three quarters of the funds will be given to us for Royalaseema. It is not known what the Provincial people have done with the funds received from the All India Committee. Moreover, they stated before that they would also send 'goods' to large extent. In Cuddapah district, our kisan Sabha people (Kisan Mazdoor Party people) are making their own arrangements. Further in the Jamulmadugu Mail Robbery, to some extent they acquired income. However, people of Cuddapah district, our party people are good adepts. They can prepare all 'things'. I arranged that the Cuddapah district 'Comrade' himself should compare the things and supply them for all the Royalaseema. So they should have prepared them to some extent. The people of Cuddapah district are capable of helping themselves without depending on others. The conditions in Chittoor district are not known. In Kurnool district, after my arrest, suspicion on other kisan workers has completely been removed. There is no fear whatever work is done now. The Police are very indifferent. Further all our workers are outside. There is a possibility to further the programme without difficulty. It strikes me that in all districts the Police are now careless. They are under the impression that all the congressmen were rounded up. So if people can pick up some courage, any work can be done. In fact, if we can infuse fear in the People or the Govt. servants, they will surely not obstruct us. Further, in the matter of violent programme, large care has to be exercised. We should take notice of the mistakes committed in other provinces. My idea is that either our people or the police should not lose their lives unnecessarily. This will be very conducive. I know that our party people will not lag behind in doing anything. As far as possible 'individual Terrorism' should be avoided. That does not mean that no revolutionary activities should be taken up. From what we see now, some Govt. servants will also cooperate with us if the movement is pushed on when Japanese invasion takes place. Our party people should always make journeys by foot whenever tools, men or other things are supplied to other places. If the police should suspect any of our people and should be searching for him, it is advisable that he should entrust his work to some others and get himself arrested in his place. Or else, unnecessarily, not only the programme but also several secrets will get exposed. When the Police have their eye on one of our people, he will not be able to do all the work. If he remains in his place and even if he is arrested there, the others can enforce the programme. Hereafter, if our people are arrested, no 'goods' of any

kind should be had to be seized from them. In this respect, much care has to be taken. Full details of addresses of persons known to you, should not be kept with you. As far as possible they should be committed to memory. Parcels should not be sent by post. Those who are suspected by the police should act with great care.

57: Swami Sahajanand Saraswati to Sisir Roy (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Copy of an English letter dt. 17-12-43 bearing the postal seal of issue, Bihar, Patna dt. 17-12-43 intercepted at Bow Bazar P.O. on 19-12-43.

From
Swami Sahajanand Saraswati
Gen. Secy of the All India Kisan Sabha
Shri Sitaram Ashram
Bihar, Patna

To
Com. Sisir Roy, General Secy,
Labour Party of India
64, Chittaranjan Avenue

Dear Sisir Babu,

Thank you for the letter of the 7th. Being out of station I could not reply earlier. A letter from Com. Jha too reached here, but could not be replied to in time due to my absence. It appears from this letter that he might have reached Patna by now but as Patna address is not known to me, I am unable to inform him. But he is welcome here and I am ready to accede to yours and his wish mentioned in the letter. I quite realise your difficulties in working in the Kisan Sabha and to be frank, all this happens because [*illegible* — Ed.] We don't want others to enter any argument with the set purpose to influence or capture the same, and the trouble starts. Partywallas never intend to join any Sabha or Union to act as mere camp followers or supporters of other parties and their stand and this is natural. Why should one party be expected to act like this? So the door should be banged for it, if not by directly creating obstacles in its way at least. And I am now awfully tired of these tactics. Rather I resent the same, but feel helpless at the same time. The Kisan Sabha must ever remain the Kisan Sabha with its independent line of action, Stand and mode of thinking and approach to the problems facing the Kisans and the people. There must be the clearly visible demarcation line between the parties and the sabha as also between the policies, lines and works of both. No subordination direct or indirect of the Sabha to any party I can allow or tolerate if I have my say and way of doing things. But I do not know how far you agree at all. But if you or

any party leaders agree on these fundamentals with me I am ever ready to fight for them for a full and free access to the Kisan Sabha.

With love & regard.

Signed
Swami Sahajanand Saraswati

58. Sahajanand Saraswati to Gen. Secretary A.I.K.S., Andhra (dt 29.12.1943) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Copy of an Eng. typed letter dt. 29-12-43 bearing the postal seal of issue, Bihar, Patna date Illegible — (intercepted at Bowbazar P.O. on 2/1/44) from S.S. Saraswati, Gen. Secy. A.I.K. Sabha.

To

The Genl. Secy. A.P.R.A., Bezwada

Dear Comrade,

It is painful to inform you at this late stage that your total provincial primary membership of Andhra is illegal and unconstitutional and therefore unacceptable, as it does not conform to the article 5 of the Constitution of the A.I.K.S. The Constitution that was amended at Bhakana has the membership form appended to it as the Appendix A, and its copies were sent to you and other provinces so far back as April last. And yet you did not take the care of perusing it, I am afraid, otherwise this colossal mistake could have never occurred.

No membership form can conform to our Constitution that does not have as its integral part the object of the A.I.K. Sabha intact, and tested on this criterion your membership form fails miserably. In your letter of the 20.9.43, you had written regarding this form, 'we have printed loose sheets, on which the aim and object of the Kisan Sabha are printed'. And I had consequently sanctioned the same. But after persuing the form that you sent, I painfully find that the object of the Kisan Sabha is not printed on that form. However, it is not a loose sheet, but a regular receipt book form. But that is all-right. You should not forget that mere printing on the form that 'I accept the aims and objects of the Kisan Sabha or A.P.R.A.' will not do.

There again you mention in the form the acceptance of the object of A.P.R.A. But the object of A.P.R.A. is not the same as that of the A.I.K.S. Rather it is quite different from that as I find after perusal. In the circumstances how can you hope to become a branch of the A.I.K.S. even if you print your object on that form? More-over your membership clauses of the Article of your Constitution clearly go against the form, meaning and spirit of the article of the Constitution of the A.I.K.S., and yet you hope that your membership enrolled should be accepted. Lastly your eighteenth article says, 'This association may be affiliated to the A.I.K.S. and to any other organisation with similar object, as and when the general body of the association decides'. Is this position right? Ours is a Unitary Constitution and not federal, and it became evident during our debates at Bombay last time on the dissolution of the Gujrat

Kisan Sabha. May last year your comrades and yourself proposed the name for your Sabha, 'The Andhra branch of the A.I.K.S.'. But now in your Constitution adopted after Bombay and ratified recently, you admit a contrary position. Therefore not only your entire membership is illegal and your Constitution inadmissible but your whole provincial organisation on that Constitution including its Committees etc. stand disaffiliated to and detached from the A.I.K. Sabha, I am constrained to admit and conclude. I did never hope that the Andhra Comrade and of whom so much has been highly talked and said would be so careless and unmindful of this obviously primary thing. Indeed it is shocking to me to write all this about those very Comrades whom I had admired highly so far. But the duty is the most merciless thing in the world.

Comradely yours

Signed

S.S. Saraswati

N.B. (The above copy has been forwarded to the President, A.I.K.S. for perusal).

Submitted

Signed

2/1/44

59: P.C. Joshi to Secretary, Andhra Provincial Committee (dt 4.1.1944) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Calcutta Police

Police Section
Patrol Out-post

Intercepted on 5.1.44

Copy of an English letter (typed) dt/4-1-44 from P.C. Joshi, 249, Bowbazar St., Cal. to Secretary Andhra Prov. Committee, C.P.I. Governorpet, Bezwada, intercepted at Bowbazar P.O. on 5-1-44.

Com Prasad Rao,

I have seen the copy of Swamiji's letter to Andhra K.S. dated 29-12-43¹ which he sent to the President and which was received here today (3-1-44). I find your entire primary K.S. membership has been rejected on the ground of Constitutional formality. But this must not upset or worry you and the preparations for the AIKS session must not be disturbed in any way.

I don't know the details of the case from your side. You send them to me here as quickly as possible. I will see Swamiji at Bihar shortly and have a talk with him, on the matter. In the meantime you print membership forms as required by the AIKS Constitution and get as many

members enrolled as possible for 1944. For even if your membership for 1943 be cancelled and you do not participate in deliberations of the Bezwada (Swamiji's decision is not however final) session of the AIKS, you must at least be on the roll of KS when the sabha meets.

As for the other points raised in Swamiji's letter, these may be discussed later on.

Lal Salams,

Sap. P.C. Joshi

P.S.

I will leave Calcutta for Bihar on about 12th. See that your answer must reach me before that.

I am also sending you a wire to day.

It seems from Swamiji's letter you have committed a technical error and perhaps that [illegible . . . Ed.] Let us know the facts and the real answer to Swamiji's facts and also the line I should take with Swamiji. Please do not get panicky. We can and will raise the matter in the CKC to get your membership okayed despite technical flaw. Anyway get ready not have any formal representation to the session.

This does not mean you delay or get less enthusiastic with your preparations for AIKS. Carry on as before.

1. Doc 58

60. Sahajanand Saraswati to P.C. Joshi (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

5.1.44

Swami Sahajanand's official intimation to P.C. Joshi of his unwillingness to continue as General Secretary of the A.I.K.S. next year has evoked replies from both Joshi and Bukhari, A.I.C.K.C., member, requesting him to reconsider his decision and expressing surprise at his continued dissatisfaction at the relationship between the C.P.I. and K.S. following the formula agreed upon between the Swami and Sardesai. A separate reliable report discloses that the Swami had written of his intentions to Sisir Roy, Secretary Labour Party of India, Calcutta,¹ who has informed the Swami that his party is in full sympathy with him and the Kisan Sabha and is willing to give their unconditional support in his effort to fight out this point inside the Kisan Sabha. Sisir Roy, on behalf of his party, begs the Swami to remain as 'guide', leader and inspirer of the Kisans in India'. Sisir intimates that a meeting of the central committee of his party is being held in Calcutta to take up the question of intensifying their work within the kisan sabha on the lines suggested by him.

1. See. Doc 57 in this connection.

61: Proposed Resignation of Sahajanand Saraswati

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Intelligence Report

11.1.44

According to C.B. 12 the report is correct. Hearing of Swami Sahajanand's proposed resignation from the Kisan Sabha the B.P.I.¹ Central Committee sent Srinarayan Jha to Bihar to persuade the Swami not to resign assuring him that he would receive the fullest support of the B.P.I. in the Kisan Sabha. The Swami wanted to know if they would be able to form a majority. The B.P.I. has told him that it already formed a strong minority and it expected to form a majority this year by gaining over the T.U.C. members. The Swami was urged to withhold his resignation until the B.P.I. gave him a final reply.

This matter will be taken up by the Central Committee which is still in session in Calcutta and it is most likely that the Swami would be given an assurance on the lines indicated above.

C.24.A. Genl
Central Intelligence Office
11.1.1944
9/1, Gariahat Road, Ballygunge
Calcutta, the 11th January 1944

1. B.P.I. stands for Bolshevik Party of India .

62: Santosh Bhattacharji to Secretary, Bengal Kisan Sabha (dt 19.1.1944) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

English translation of a Bengali letter dated 19-1-44 intercepted at Bow Bazar P.O. on 21-1-44 bearing the postal seal of issue — illegible — from Santosh Battacharji, Secy. Rajshahi Kishan Sabha P.O. *Ghoramara*, Dt. Rajshahi to the Secy. B.P.K.S.

I am sending the membership list of the Krishak Samity and money for the rest quota. The total number of members is 2419. The list of members that I have already sent and the list which I have received now amounts to 2862 in 1943. In the meantime I have received a report of missing of a Bookpost containing counterfoils of cheque and list of No 448 of Khajuora Union due to mismanagement of the postal dept. So I am sending the list of 2419. The quota

of about 1752 has already been supplied to B.P.K.S. I am sending Rs 11 and nine pies on account of the 667 members. Out of 2419 members, 406 are female members. Please send one thousand receipt books to enlist members as we have got no receipt Bill (on hand). I am sending the annual report in detail within two days. This time the Conference will be held at Khajura on Sunday and Monday probably the 6 and 7th Feb. We are writing to Gurudas to attend the Conference. Please inform if you have got any suggestion to invite members from other districts. Also let us know who and how many of you are coming to the Conference. I will communicate to you by the next letter, the exact date of the conference. Please let us know your dues to us. Please send if you have got any new book and circulars.

Please accept Red greeting

Signed Santosh Bhattacharji
Secy. Rajshahi of Kisan Sabha

63 Bishan Singh (Punjab Kisan Sabha) to the Bengal Kisan Sabha (dt 31.1.1944) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 521/44
[Bengal State Archives]

Copy of an Eng. typed letter dt. 31-1-44 bearing the postal seal of issue, Lahore G.P.O. dt. 1.2.44 intercepted at Bowbazar P.O. on 4/2/44 from Bishan Singh for Gen. Secy. P.K.S. 114 Mcleod Road, Lahore to the Prov. Kisan Sabha (Bengal Office), 249, Bowbazar Street, Calcutta.

Dear Comrade,

We are holding a Kisan Conference in Multan District, a very fertile canal colony, in the heart of Muslim peasantry. The District is politically backward. So relief work could not be organised. We are organising an exhibition regarding famine in Bengal. I wish you to help us in that respect by sending us actual photographs and posters. If you lend us these permanently well and good otherwise we will return you the same after the Conference.

Yours Comradely

Bishan Singh.

64 Police Report on Peasant Movement in Bihar

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

According to the report submitted by CB 47 regarding the BPI organisation, Srinarayan Jha (ESPI) was sent by the party in 1943 to visit the party centres in north Bihar. He accordingly

visited Muzaffarpur, Amoa-Ekderwa, Mayholin, Darbhanga and other places in Bihar. He visited Bihar and Patna. He met Swami Sahajanand Saraswati, General Secretary A.I.K.S.

A Bihar report shows that Sri Narayan Jha was on a tour in Bihar.

The organisational report of the BPT² as discussed in the Central Committee meeting of the party shows that the party has taken up peasant work with all earnestness and that the party has been striving to get its peasant committees recognised by the Provincial Kisan Sabha.

Signed Dutt
31.1.44.

1. Ex Security Prisoner.
2. Bolshavik Party of India.

65: Circular sent by Bengal branch of CPI (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

P.C. Circular No. 4/44

To All D.Cs.

Calcutta 31-1-44

Dear Comrade

The Dist. Kisan Conference are going to be held soon. There, amongst other business, you are to evolve out your suggestions for the Presidentship of the A.I.K.S. and the Presidium of the BPKS.

For the President of AIKS suggest the name of:
Swami Sahajananda Saraswati

For the President of the BPKS, Suggest:
Gopal Haldar
Abdulla Rasul
Manindra Singh (Mymensingh)

Prov. Headquarters,
Beng Com.,
CPI
249 Bowbazar Street
Calcutta



66 Abdulla Rasul (BPKS) to Secretary, Krishak Samity, Mymensingh (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 556/44
[Bengal State Archives]

Indian Censorship

Secret
Terminal

Dated Place Mymensingh Date 7/2/44 Letter/Telegram-Date nil

From
Abdulla Rasul
Bengal Provincial Krishak Sabha
Bowbazar Street
Calcutta

To
Secretary Dist.
Krishak Samity
Sutarpatty Road
Mymensingh

References

Postmark Illegible
and date 31-1-44

ORIGINAL: Released

NIL

Language-Bengali

DB(6), S.P. Mymensingh (2), File (2)

Krishak Sabha Activities:

Circular No. 10

Election of delegates to the Bengal Provincial Krishak Conference and election of members for the Bengal Provincial/ Committee.

1) The seventh session of the Bengal Provincial Krishak Conference will be held this year at Thakurgaon in the district of Dinajpur¹. The quota of delegates to the Provincial Conference, and that of representatives from each district for election to the Bengal Provincial Committee for the new year are shown in the chart² appended herewith. This election shall be conducted in accordance with the provisions made in the new Constitution and Rules published in July, 1943 by the Bengal Provincial Krishak Sabha. The date of election and the list of names of the delegates and the members of the Provincial Committee must be communicated to the Provincial Office in obedience to the directions given in the organisation letter Nos 7 & 8¹. The second column on the eighth page of the organisation letter No. 8 regarding the election of the Provincial Krishak Committee, shall be read after necessary correction, as follows:

Read 'shall be finished by the 12th February'

in place of

'Shall be finished by the 10th February'.

The election of members for the Provincial Krishak Committee will be held on the 12th February, and the results will reach the Provincial office by the 14th February. The election of delegates to the Provincial Conference will be held on the 10th February, and the results will reach the Provincial Office by the 12th February.

The total number of primary members in Bengal for the election of delegates to the Conference lies between one lac and five lacs; consequently one delegate shall be elected per two hundred members from each district. It has not been possible for this office to allot the exact number of delegates from each district as the list showing the number of members union by union, from each district has not reached this office. So the number of delegates actually elected may exceed by one or two the quota fixed according to the rules governing the constitution.

2. The quota of delegates to the All India Krishak Conference from each district has been allotted in the chart given in the reverse. The date of election is February 10, and the date by which the results shall reach the Provincial office is Feb. 14. This quota has been fixed in proportion to that submitted to the All India Krishak Sabha by the Provincial Sabha.

3. Watch must be kept over the election of delegates to the Provincial Conference, and to the All India Conference by the peasantry, vigilant eyes should be kept open so that the delegates to the Provincial Conference belong to the body of cultivators, ardent and vigilant workers and peasant comrades shall have to be deputed in large numbers to the All India Conference to be held at Bezwada during the period beginning from the 12th March, and ending on the 15th March. It is likely that the Provincial Sabha will, if possible, bear the expenses of passage of such peasant delegates. But it must be remembered that the financial position of the Krishak Sabha is not good. So it is expected that the districts themselves should shoulder the burden of these expenses as far as possible. Bezwada is in Madras and the expenses for the double journey to and from this place are Rs 60 approximately. The time of departure of the delegates from Calcutta shall be notified hereafter.

4. Directions had been previously issued through the organisation letter N. 7¹ to finish the Thakurgaon Provincial Conference and the election of the 'President's Council' of the new Provincial Krishak Committee by the 31st January. But considering that the election may not be completed by that date owing to the present situation, the last date of election of the 'Presidents Council' has been extended to the 10th February. The names of the members of the 'President Council' must reach the Provincial Office by the 12th February.

5. The District Krishak Samities are hereby directed to the effect that delegate fees @ two annas for each delegate to the Provincial Conference and eight annas for reach delegates to the All India Conference, must be remitted to the office of the Bengal Provincial Sabha immediately after the election of delegates to the Provincial Conference and to the All India Conference. The delegates shall not be entitled to take part in the election of the President of the All India Conference until and unless their fees have been credited to their account.

Signed
Captain
O.O. Special Censor Station, Mymensingh

office of the O.C. Censor Station
Calcutta, dated 14th February 1944

Chief Censor — India
New Delhi

D.C. of Police, Special Branch
Calcutta

Copy of submission slip No. ICY/1585/55/20 dated 7/2/44 forwarded for information.

Signed
Captain
for Senior Censor — Calcutta

1. The conference actually took place in Phulabani in the same district, according to the account given in Abdulla Rasul's *Krishak Sabhar Itihas* (in Bengali) p. 144. [See also Doc 74 below — Ed.]
2,3 & 4. Not printed.

67: Extracts from Fortnightly Report from Madras for the first half of February 1944

File No. 18/2/44 — Home Poll (I)
[NAI]

Kisan Sabha Meeting

At Nidubrolu¹ there was a meeting of followers of N.G.Ranga where a resolution was passed protesting against the ban on National Youth Leagues. The Tamil Nadu Kisan Sabha held a meeting in Madras. The third Andhra Provincial Radical Democratic Party Conference was held in Guntur on the 12th and 13th of February and the Kasargod Kisan Conference was held on the 29th January Karuvellur in Malabar District. Dange, President of the All India Trade Union Congress spoke at a Labour Conference at Mangalore.

1. A town in Andhra Pradesh

68: Extracts from Fortnightly Report from Madras for the second half of February 1944 — Kisan Sabha Meeting at Bezwada

File No. 18/2/1944 — Home Poll (I)
[NAI]

The most widely published Communist activity of the fortnight under review however, was the question of the holding of the All India Kisan Conference at Bezwada between the 12th and 18th of March. The holding of this Conference is viewed with some misgiving. In view of the present policy towards Communists, it is not desired to ban it, but the fact remains that

the Kisan leaders expect an attendance of 1,00,000 people though the figure seem rather optimistic and that the gathering of such a concourse in present times raises problems of transport and of food which are not easy to solve. There is the further fact that the Kistna District Ryots' Association, a rival organisation wants to hold a Provincial gathering at Bezwada on the same days, and there is more than a little risk of a clash. For the present, in pursuance of the ordinary policy of trying to restrict travelling by train to fairs and festivals as was done in the case of the festivals at Chidambaram, Srirangam and Karamadai an order has been issued empowering the Railway authorities to decline to sell tickets on those days to Bezwada or to stations within 30 miles of it, to persons who cannot satisfy them that they are travelling on business unconnected with the Conference. The Kisan leader has assured the Chief Adviser that he has issued strict instructions that all those who come to the Conference from Kistna and Guntur should come by road and that he expects only about 300 persons from distant places. Local officials have also been given instructions to watch the situation very carefully and to repress any possible out-burst of disorder.

69: Extracts from Fortnightly Report from Bihar for the second half of February 1944

File No. 18/2/44 – Home Poll (I)

[NAI]

Kisan Sabha – Swami Sahajnand has recently been informed of the Madras Government's ban on the All India Kisan Sabha Conference at Bezwada, ostensibly on the ground of Railway restrictions, but the Sabha believes it to be due to the influence of the local Hindu Mahasabha and Zamindars. A prominent member of the Sabha, who has been touring in Monghyr, one of the strongholds of the Sabha, is reported to have expressed great disappointment at the apathy of the local leaders and he ascribes this to the fact that every one is prosperous as the result of the boom in grain, and therefore absorbed in their selfish interest.

70: Extracts from Fortnightly Report from Orissa for the second half of February 1944

File No. 18/2/44 – Home Poll (I)

[NAI]

Communists: Activity is reported to have centred round enrolling members for the Kisan Sabha. This was met with a fair amount of success at the beginning through the use of the simple expedient of telling the villagers that all those who possessed one anna membership receipts would be eligible for an issue of free cloth in the near future. When this mendacious propaganda was exposed, the popularity of these workers naturally faded. Allegations have also been made by Communists that Congressmen in jail have been receiving training inside the jail from Congress Socialist leaders, and are preparing to revive the campaign of sabotage

when they are released. This information from Communist sources is accepted with reserve, as it is thought that it may be propaganda to enable them to gain kudos by professing to win over persons said to have been affected by this training.

71: Report from Bimal Sen to the Secretary B.P.K.S (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 556/44
[Bengal State Archives]

Indian Censorship

Secret
Terminal

Intercepted Place-Chittagong Date 23-2-44 Letter Dt. 18-2-44

| | |
|------------|---------------------------|
| From | To |
| Bimal Sen | The Secy., B.P.K.S. |
| Chittagong | 249 Bowbazar Street |
| | B.P.K.S. Office, Calcutta |

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LETTER:

Kisan Sabha Activities Chittagong District Kisan Conference

'The 4th Session of the District Kisan Conference was held on the 7th and the 8th February at the village Dewanpur in the Union of Quepara with Comrade Manoranjan Sen in the Chair. Three hundred peasant delegates attended the session on the 7th February. The delegates from Kutubdia, Barakhine, Satkania, Baranu, Mireswar, Kumira and other villages attended the delegates meeting. They covered a distance of about 20/25 miles on foot preaching the object of the Kisan Conference to the villages they passed through.

On the following day at least 5000 peasants both male and female assembled in the open session. In one corner of the Pandal pictures were exhibited. One thousand male and female peasants and the middle class people from Khandakia, Braspur, Kelishar, Ratanpur, Dhalghat and other Unions in a procession went to attend the session. Comrade Bankim Sen hoisted the flag. Comrade Ranadhir Das Gupta moved a political resolution and submitted the annual report for the year. The President read aloud the message from Rafique Ahmed Siddique, the President of the League wishing every success to the session. Messages of congratulations were received from District Communist party, Nari Samity, Students' Federation and A.R.P. Comrade Bimal Sen, Abdul Sattar, Abdul Karim delivered speeches on the constructive programme of

the samity. The following resolutions were passed amidst loud cheers. An agitation should at once be launched against the hoarders and at the same time Govt. should be asked to purchase 5 crores maunds of rice from the hoarders for the smooth running of the rationing system in the towns and demanding introduction of rationing in villages too. An all party ministry should at once be formed to avert the repetition of Famine and Pestilence, Mahatma Gandhi, Jawaharlal, Azad and Ananta and Ganesh, the brave sons of Chittagong should immediately be released. A committee of village poets has been formed. A strong committee for the coming year has been formed, with Abdul Sattar, the peasant leader as president and Comrade Bimal Sen as Secretary. 'A peoples drama' on the life of a village peasant has been staged under the direction of Babu Dhiren Sen. A few 'Farmers' dances' and a dance named 'Hitler's annihilation' have been staged under the direction of Nani Mitra. Fani Barua and Ramesh Shil, through their drive and agitation for the unity. Comrade Randhir's appeal for the fund of the Peasant Committee met with a quick response. On the spot a sum of Rs 96/7/6 in cash and a gold ear-ring and 1 bangle were collected. The *Kabi* Committee has been formed with Ramesh Shil, Hadayat Khan and Fani Baura as office bearers.

N.B. Details will follow. As the report of Kisan Conference has not yet been published in the *Janayuddha* we are sending it again. Hoping that Kisan Sabha would look to the matter. You certainly appreciate the importance for bringing this into the lime-light.

Copies of resolutions and detailed reports are sent herewith¹. The Conference has suggested the names of:

1. Swami Sahajananda as the President of A.I.K.S.
2. Abdulla Rasul, Mani Sing and Gopal Haldar as the President of B.P.K.S.

1. *Delegates for B.P.K.S.*

Sukhendu Dastidar, Ranadhir Das Gupta, Bimal Sen, Chittapriya Das, Sukuja Datta, Hashi Dutt, Bankim Sen, Deben Sikdar, Abdul Sattar, Suren Dey, Sudhangshu Dutt, Priyadarshi Barua, Manirullah, Faroque Ahmed, Chandi Tripura, Nagendra Dey, Ardhendu Datta, Umesh Das, Dhiren Shil, Chittaranjan Das, Harihar Mallick, Probhat Sen, Saheb Meah, Arati Das, Madhab Mazumdar, Jogendra Saha, Abubakar Siddique, Jasoda Talukdar, Harisohan Das, Nawab Mesh, Amar Sen, Jiban Das.

The peasant working Committee have been formed with the following workers.

- | | |
|--|----------------------|
| 1. Bimal Sen Secretary | 13. Jogendra Saha |
| 2. Abdul Sattar President | 14. Probhat Sen |
| 3. Sukhendu Dastidar — Asst. Secretary | 15. Jiban Das |
| 4. Abubakkar Siddique | 16. Chittaranjan Das |
| 5. Manirullah | 17. Ardhendu Datta |
| 6. Madhab Mazumdar | 18. Chittapriya Das |
| 7. Suren Dey | 19. Abdul Aziz |
| 8. Ali Ahmed | 20. Sukumar Datta |
| 9. Mansur Ahmed | 21. Umesh Das |
| 10. Abdul Salim | 22. Harimohan Das |
| 11. Ranadhir Das Gupta | 23. Sibcharan Das |
| 12. Jasoda Talukdar | 24. Deben Sikdar |
| | 25. Ramani Das |

Members of the Provincial Kisan Sabha

1. Randhir Das Gupta
2. Bimal Sen

3. Abdul Sattar

Delegates for A.I.K.S.

1. Ranadhir Das Gupta
2. Bimal Sen
3. Abdul Sattar
4. Sukhendu Dastidar
5. Suren Dey
6. Brajen Das
7. Deben Sikdar

8. Umesh das
9. Sukumar Datta
10. Pravat Sen
11. Arati Das
12. Purendu Kanungoe
13. Dharendra Shil
14. Bankim Sen

Signed
(R.S. Gill)

Office of the O.C. Censor Station
Calcutta, dated 1st March 1944

Chief Censor – India
New Delhi

D.C. of Police, Special Branch
Calcutta

Officer Commanding
Bengal Intelligence Dept.

Signed

B.T.H. Warnor, Capt.
Captain for Senior Censor – Calcutta

1 Not printed.

72: N. Prasada Rao to Bankim Mukherji (intercepted letter)

Government of Bengal, Office of the D.C P. (Sp. Br.) File No. SK 556/44
[Bengal State Archives]

Copy of an English letter dated 25-2-44 intercepted in Bow Bazar P.O. on 28-2-44.

From N. Prasada Rao, Secy, Reception Committee, Bezwada (8th Annual Session – All India Kisan Saba).

To Com. Bankim Mukherjee, President, All India Kisan Sabha, C/o Bengal Provincial Kisan Sabha, 249, Bow Bazar St.

Dear Comrade,

I am herewith sending you the programme paper and there in you will find that you have to hoist the flag. We have taken the liberty of publishing this having in view last years' precedent.

Last year at Bakhna Com. Indulal Yagnik, the outgoing President, hoisted the red flag. Thus we have announced you to hoist the flag. I request you to accept the invitation for the same.

Ranga group is attempting at mischief at Patna, I have been informed how they have started a rival district Ryot Association in Kistna to create confusion and spoil our session. They have appealed to the kisan not to give funds or attend the conference of the Communists. But later finding such opposition useless they thought of another plan. They have asked the peasants to hold local Conferences on March 14th and 15th 1944 as a protest against the communist sponsored A.I.K.S. Conference. Now they have realised that too is futile. So far, about Rs 20,000 are collected and the whole villages are going to attend the Conference. Also peasants are coming forward to help the reception Committee with all sorts of materials like palm leaves, chutnis, tamarind etc. So this unnerved the Ranga group and hostile Congressmen. So as a last resort, they reorganised the Andhra Provincial Ryots Association, dissolved last year, as in circumstances necessitated such reorganisation and decided to hold the Andhra Provincial Ryots Conference at Bezwada on March 14th and 15th 1944. But this too is cutting no ice. The people have understood this game of disruption. They could not get a single pie for their conference so far from hostile centres. Now Newspaper reports say that their conference was banned by the Govt.

Anyhow they will try their utmost to create mischief. We are ready for all eventualities; get assurances of provincial govt. that our conference will not be interfered with. We are guarding the pandals at and are rallying 6500 volunteers at the Conference time. Besides all this we have the masses behind us. Everywhere we are getting tremendous response . . .

Will it be possible for you to come here for a tour of a few days in some centres. We will arrange all transport facilities, engage a touring car. It would be enough if you come by third night so that you can tour from 4th to 8th and attend the CKC meeting on 9th. Please intimate us soon.

Yours fratesnally,

Prasada Rao
Secretary

73 Extracts from Fortnightly Report from Madras for the first half of March 1944

File No. 18/3/1944 – Home Poll (I)

[NAI]

Communists: Communist activity this fortnight has been centred round the All India Kisan Conference at Bezwada. The controversy aroused by the Government's ban on travelling by railway within 30 miles has already been referred to in my last report. There had been no further development in this direction and as a matter of fact the District Magistrate imposed similar restrictions on bus travel. The whole idea was to prevent the imposition of further strain on the railway by making it as difficult as possible for persons to travel by train to the Conference. The majority of those who attended the Conference must have come on foot or by bullock cart but no official report has been received yet. The Conference was opened on

the 9th and after preliminary meetings by the subjects Committee; the open sessions were held on the 14th and 15th. In addition to the President, Swami Sahajanand Saraswati a number of prominent communist leaders of this Presidency as well as people from outside like P.C. Joshi attended. Communists have been making great play with the fact that the Conference was not a 'Communist' one but an All India Kisan affair. But as a matter of fact it seems to have been dominated mainly by communist elements. Full reports of the speeches made are not yet available but from news-paper reports, it is seen that the usual demands for a National Government and release of Congress leaders were made and Mr Joshi is reported to have stated that the Communists are carrying out the Congress programme. A number of other subjects such as food production, Peasants' rights, Hindu Muslim unity etc., were also discussed.

The District Magistrate and the District Superintendent of Police, camped at Bezwada with a posse of reserve police but fortunately the rival 'Rangites' made no attempt to interfere with the Conference.

Communists were active not only in Kistna and surrounding districts but throughout the Presidency in 'netting' in people to attend the Conference. Reports show that local communists from as far away as South Canara attended the Sessions. Rangites though they were not active in Bezwada, held a counter Ryots conference in Guntur on 10-3-1944 which was opened by Mrs N.G. Ranga. Speeches were made urging the people not to attend the Bezwada Conference.

74: Extracts from Fortnightly Report from Bengal for the first half of March 1944

File No. 18/3/1944 - Home Poll (I)

[NAI]

The seventh session of the Bengal Provincial Krishak Conference was held at Phulbari in Dinajpur between the 29th February and the 3rd March and was attended by about ten thousand persons. The main subject discussed was the food situation and the means to avert another crisis. District Krishak Conferences were also held in Malda, Tippera and Jalpaiguri. A Pakistan Conference attended by about five thousand persons was held in Rajshahi.

75: Extracts from Fortnightly Report from Punjab for the first half of March 1944

File No. 18/3/44 - Home Poll (I)

[NAI]

At a meeting of delegates to the Provincial Kisan Sabha held to elect new Office bearers at the end of February in the house of the president of the Punjab Congress Working Committee, Mian Istikhar-ud-Din, MLA, now in detention, the opportunity was taken to review the years work. It was decided to maintain the division of the Punjab into three zones and to concentrate on the development of the Eastern and Western zones which were admitted to be backward

politically and organisationally and in which, as in the States, little progress had been made. The smallness of the annual income of the Sabha hardly supported the big increase claimed in membership, but the year's working balance showed that the Sabha is financially self-supporting. Various resolutions were passed demanding, among others, the release of all political and security prisoners and supporting price control and tending to divert the activities of the Sabha into the strengthening of its position through agitation against authority.

76: Extract from Fortnightly Report from Bihar for the first half of March 1944

File No. 18/3/44 – Home Poll (I)
[NAI]

Kisan Sabha: Swami Sahajanand left for Madras on the 5th March. Communists working within the Sabha are extremely critical of the Swami and consider that he is demoralized and is demoralizing his followers. At the meeting of the All India Kisan Sabha held at Patna on the 26th February, he is reported to have said that it was imperative to fight Government somewhere on some issue, preferably on the cane question or over the Defence Savings Drive. At the Patna meeting he received no response when he asked for volunteers to follow him to jail.

77: Extracts from Fortnightly Report from Special Press Adviser Delhi, for the first half of March 1944

File No. 18/2/44 – Home Poll (I)
[NAI]

The nationalist papers strongly criticised the order of the Madras Government stopping the sale of tickets to persons proceeding to Bezwada for joining the All India Kisan Conference. They considered it a gross interference with individual liberty. In their opinion, instead of putting obstacles in a round about manner, the Government should have straight away banned the Kisan Conference.

78: Extracts from Fortnightly Report from Bihar for the second half of March 1944

File No. 18/3/44 – Home Poll (I)
[NAI]

Kisan Sabha: Reports seem to indicate that the Communists regard the Bezwada Conference as a triumph for their own party. They consider that the Swami's Presidential address was

unconvincing and that he attempted to adopt a dictatorial attitude without success. Joshi was acclaimed as the future Lenin of India. There were no particular reports about the activity of the Kisan Sabha in the province during the fortnight.

79: Assistant to the Inspector of Police, NWFP, to Deputy Commissioner of Police, Calcutta (reg. one Umar Faruq)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Secret

From
The Asstt. to the Insp. Genl. of Police
C.I.D., N.W.F. Province.

To
The Deputy Commissioner of Police,
Special Branch, Calcutta

No. 3598/SB

dated Peshawar the 28-3-1944

Memorandum

Umar Faruq, a prominent kisan worker of District Hazara, N.W.F.P. left for Rawalpindi on 29-2-44, enroute to Calcutta. It is reported that he will visit the All India Labour Party office in Calcutta and meet Sisir Roy, General Secretary of the Party as well as Nripen Ghosh, Kamal Sarkar and Abdur Rehman, who were until recently working at Shinkiar, District Hazara, but were exonerated from this Province. Umar Faruq is expected to attend the All India Kisan Sabha meeting at Bezwada, Andhra District too.

Will you please let me have a short note on his activities during his stay there.

for Asstt. to the I.G., of Police,
C.I.D.N.W.F. Province

80: Extracts from Fortnightly Report from Bengal for the first half of April 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

Krishak conferences were held in Mymensingh, Dacca and Murshidabad districts towards the end of March, the attendance varying from 400 to 1,000. The conferences urged the extension

of rationing, the opening of controlled shops, the fixation of minimum and maximum prices for jute and paddy, the return of land sold or mortgaged during the famine, the supply of cattle, ploughs, seed and interest free loans to cultivators, the opening of hospitals and gruel kitchens in needy areas, the appointment of more veterinary doctors, the excavation of canals, the removal of water-hyacinth, and the release of political prisoners and the formation of a national Government. In Murshidabad the reduction of rents was also urged and speeches were made against hoarders and profiteers.

81: Extracts from Fortnightly Report from Bihar for the first half of April 1944

File No. 18/4/44 – Home Poll (I)
[NAI]

Communists: The Communists are said to be criticising Government for exercising undue pressure in the savings drive. At a meeting about food in Bhagalpur, they blamed the hoarders for the present situation, but also considered that Government was largely responsible. Tension between the C.P.I. and the Kisan Sabha appears to have increased and Jamuna Karjee has been accused of accepting a subsidy from Government.

82: Extracts from Fortnightly Report from Orissa for the first half of April 1944

File No. 18/4/44 – Home Poll (I)
[NAI]

Communists: Since the Bezwada session, the local Communists party has decided to organise the Kisan Sabha on a stronger basis and it seems that their present activities will be more in the direction of organisation of the peasants than purely Communist propaganda. Recently, however, their activity was devoted exclusively to Congress propaganda directed against candidates of the Swaraj Party in the recent District Board elections. They still urge the release of the Congress leaders and unity between political parties in order to establish Coalition Ministries in the provinces.



83 Intelligence Report on AIKS (dt 6.4.1944)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

1. A.I.K.S. T.P 19 reports on 28th March that according to Kamal Sarkar' who attended the A.I.K.S. Conference at Bezwada, Madras Presy on 17th March, Swami Sahajananda is against the *People War* theory and also does not like a member of the K.S. to owe allegiance to any other political party. He will expel all such members.

84: Extracts from Fortnightly Report from Madras for the second half of April 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

Communist activity among kisans has also been fairly intense, following the fillip recently given by the All India Kisan Conference at Bezwada. A Tamil Nadu Kisan Conference is proposed to be held at Mannargudi in the Tanjore district where there is already some tension between the landlords and tenants. At Kerala Kisan Conference was proposed to be held also near the borders of Cochin State. The Cochin authorities protested to the Government that this would lead to trouble among workers in the state and the Government have accordingly prohibited the holding of the Conference within 20 miles of the border and have also asked the District Magistrate to give a warning to the organizers to avoid any attacks on either this Government or the state authorities.

Congress sympathisers and Rangites have re-acted to communist activity by increasing their own efforts to win over the Kisans. Rangites Ryots' Associations have been formed in Guntur and Chittoor and a Congress Kisan organisation in Malabar district. The communists however have much better organisation and probably larger funds and it seems doubtful whether the opposing parties would be able to make any substantial headway against them.

85: Extracts from Fortnightly Report from Orissa for the second half of April 1944

File No. 18/4/44 - Home Poll (I)
[NAI]

Communists: The Communists are actively enlisting members for the Kisan Sanghs at Cuttack, and they are said to be engaged in propaganda against the Savings Drive. At Puri, the

Communist committee deplored the slow progress in forming Kisan Committees, but congratulated the workers on their activity in canvassing on behalf of Congress candidates in the District Board bye – elections.

86: Extracts from Fortnightly Report from Madras for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

In Madras City they (communists) continue their vendetta against the Madras Labour Union and they have formed an organisation Committee with the object of wresting power from the present leaders of the Union. In Malabar and Tanjore they have been busy with Kisan Conferences. In the first district the holding of the conference near the borders of Cochin was prohibited whereupon they shifted the venue to Calicut. It lasted for only one day and passed off quite peacefully. In Tanjore the Conference was presided over by Mr S.V. Parlaker, M.L.A., of Bombay and was attended by about 5,000 peasants. The usual resolutions expressing concern over the Bengal famine and asking for relief for the same, and urging the Government to release the Congress leaders to meet the Japanese-Fascist menace, were passed. As mentioned in my last fortnightly report there has been some tension in this area between agricultural labourers and their landlords. But the Conference has not been followed by any immediate repercussion.

Congress leaders are growing increasingly jealous of the influence of the Communist Party and in Malabar they have started forming Congress Kisan Committees and political suffer's leagues as counter organizations. In the Telugu districts there is already the Rangaite Associations but no particular activity of the party has been reported this fortnight.

87 Extracts from Fortnightly Report from Bombay for the first half of May 1944

File No. 18/5/44 – Home Poll (I)
[NAI]

On 11th May 1944 about fifty persons armed with guns and 'dharias' entered a village (Sarbhani) in Broach and Panch Mahals District, belaboured the village policeman, broke open the Cooperative Society's shop, looted tins containing kerosene oil and set fire to Government's grain depot. The damage is estimated Rs 16,000. The motive for this outrage is not clear. A Circle Inspector and an Assistant Rural Development Inspector who were camping for the night at a village in Belgaum District in connection with the grain purchase scheme were attacked by an armed gang with the object of obtaining the cash brought by the Circle Inspector for the purchase of grain. As the gangsters did not find any cash with the Inspector they belaboured him and his companion and asked them to resign their posts. Some saboteurs

burnt the records of six villages in Belgaum District and took away land revenue amounting to Rs 300. In Bijapur District the land revenue remittance amounting to 1,062 was looted. Some persons entered the house of the Police Patel of a village in Dharwar District after midnight, assaulted him and decamped with gold and silver ornaments.

88. Extracts from Fortnightly Report from Bihar for the first half of May 1944

File No. 18/5/44 - Home Poll (I)

[NAI]

Kisan Sabha - There is reason to think that the quarrel between Swami Sahajanand and the Communists has not abated and that the Swami may make an approach to the Congress.

The adibasis: There was a mass meeting of aboriginals of a part of the Ranchi district at Mandar. The meeting was convened by a Father of the Roman Catholic Mission and was presided over by the Deputy Commissioner. About 800 of the aboriginals attended. The main object of the meeting was to put forward certain fears and grievances about their lands. They want measures to be taken, if necessary by amending the Chota Nagpur Tenancy Act, to prevent their lands from being sold for arrears of rent and, in particular, to safeguard the lands of aboriginals who are serving in the Forces. These questions are being further examined by Government.

89. Extracts from Fortnightly Report from Madras for the second half of May 1944

File No. 18/5/44 - Home Poll (I)

[NAI]

Agricultural labour also is becoming restive and is agitating for higher wages. In the Amalapuram area in East Godavari, which has been a danger spot this flared into a riot when one man was murdered and some were injured. In Mannargudi, after the recent Kisan Conference held there, signs of trouble have begun to appear between labourers and land-owners and in some cases tenants refused to take up lands for cultivation except on the promise of better terms. From West Godavari comes a report that a labourer, who refused to accept work for six annas a day was beaten to death. On the whole, however, the labourer appear to be in a fairly strong position and in some places, for example in portions of Chingleput, there is an acute dearth of labour and the Collector reports that he has heard that the wives of local landlords are going out themselves to harvest the paddy.

90: Extracts from Fortnightly Report from Bihar for the second half of May 1944

File No. 18/5/44 – Home Poll (I)

[NAI]

Kisan Sabha – A conference was held in the Gaya dist. on the 13th and 14th May. The meeting had been well advertised, but the attendance was poor, largely owing to the marriage season. Swami Sahajanand was President. He seems to have been mainly concerned with refuting the charge that he was on the pay of Government. He took up a negative attitude about the war. His line was that the kisans would fight under a national Government, but in present conditions though they will not obstruct war efforts, they are not going to take up arms.

91: Extracts from Fortnightly Report from Orissa for the first half of June 1944

File No. 18/6/44 – Home Poll (I)

[NAI]

5. *The Communists:* The Communists in several districts continue active propaganda urging the release of political prisoners and the opening of grain golas. Fifteen hundred people attended the Cuttack District Kisan Conference held under their auspices on the 2nd June 1944. Some of the speakers alleged that the police had tried to stop people from attending the conference but when they were asked by a Sub-Deputy Magistrate to give specific instances they were unable to do so. The conference passed resolutions mourning the death of Mrs Gandhi, Mr Mahadev Desai, and those who died of starvation in 1943; congratulating the armies of Russia and China on their heroic fight against the enemy (no mention was made of the Indian, British or American armies), requesting Mr Gandhi to open negotiation with Mr Jinnah; and urging Government to open cheap grain golas. Similar meetings were held in Puri, Ganjam and Balasore districts. It is evident that the Communists wish to persuade the public that they can solve all problems of food supply.

92 Extracts from Fortnightly Report from U.P. for the first half of June 1944

File No. 18/6/44 – Home Poll (I)

[NAI]

Economic: There has been a little variation in the price of farm foodgrains. The price of wheat generally remains at or near the maximum statutory price of Rs 10 a maund, whilst gram and

barley are well within the ceiling prices. The arrivals of wheat, however, continue to be very disappointing. Arrivals were partially affected by early rain, but the tendency to hold on to stocks in the rural areas is becoming increasingly apparent. The poorness of arrivals has naturally adversely affected Government purchases which will now have to continue throughout the rains, a season in which at one time it was hoped to avoid buying.

93: Extracts from Fortnightly Report from Madras for the first half of June 1944

File No. 18/6/44 - Home Poll (I)

[NAI]

Communists: Communists have been as busy as ever in their attempts to increase their hold over labour and to exploit the general economic situation. In Madura and Ramnad they are said to be forming Kisan Sabhas with some amount of success. In the Mannargudi area in Tanjore district the Collector reports that they have been actively fomenting trouble between land owners and their tenants. There have already been minor clashes and the land-owners on their part have started organising themselves. The Collector is trying to settle the dispute which mainly centres around the question of wages, by conciliatory methods. But if these fails, rigorous measures against the local leaders of Kisan sanghamis may be necessary as otherwise a large extent of land is likely to be left uncultivated. In their efforts to capture the kisan organisations, Communists continue to come into conflict with the older pro-congress Ryots' Associations, which have been formed by N.G. Ranga's followers. In West Godavari a District Ryots' Conference ended in disorder following a clash between the two factions and the District Superintendent of Police with a party of Armed Reserve had to intervene.

94: Extracts from Fortnightly Report from Bombay for the second half of June 1944

File No. 18/6/44 - Home Poll (I)

[NAI]

Kisan Activities: The First Gujarat khedut Conference was held at Deogadh (Surat) on 7th June 1944 under the presidentship of Swami Sahajanand Saraswati. It was attended by about 4,000 peasants. The Swami in his presidential speech criticised Government Food Control policy which, in his opinion, encouraged the black market and corruption amongst Government Servants. Referring to the exploitation of Kisans by Sawkars and others, he advised the Kisans 'to unite and use their inherent powers'. Resolutions requesting Government to stop the black market by opening cooperative grain shops and to issue permits for interdistrict transport of wheat and rice, expressing satisfaction at Mr Gandhi's release and demanding unconditional release of other leaders, were passed at the conference. . . .

. . . As a result of dispute between the Zamindars and their tenants in Kanphaipura, a

village in Kaira District, over the payment of increased land rent, lands have so far remained uncultivated. The District Magistrate has served notices on the Zamindars under the Defence of India Rules calling on them to show cause why their lands should not be attached if they remained uncultivated. The Zamindars are reported not to be willing to allow their land to be cultivated unless their demands for an increased land rent are met by their tenants. A public meeting of Kisans was organised at the village on the 10th June when Swami Sahajanand advised the tenants to resist the demands of the Zamindars and assured them of the support of the Kisan Sabha in their fight. The situation is peaceful and is being closely watched.

95: Extracts from Fortnightly Report from Bihar for the second half of June 1944

File No. 18/6/44 – Home Poll (I)
[NAI]

The Kisan Sabha: The Bihar Provincial Kisan Conference was held in the Monghyr district on June the 17th and 18th. From five to eight thousand people attended it. Swami Sahajanand seems to have spoken cautiously in favour of the Congress though he said he had his differences with the Congress, but he believed that the Congress alone could achieve Indian independence. He denied that he had supported Pakistan, but said that without Hindu-Muslim unity a national Government could never be formed. Karjanand Sharma said that cooperation between Gandhi and Jinnah was what was wanted. He gave some good advice to the audience about combating the dacoity menace.

96: Sahajanand Saraswati to A. Rasul (dt 15.7.1944) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Dear Comrade Rasul,

Thank you for the letter of the 10th¹ along with the Circulars 6th and 7th. But please note that the circular No. 5 has not reached me, why I cannot say – please therefore send a copy of the same to me.

As regards the House question I am sorry for the same. But please excuse me if I say bluntly that it is merely because of certain of your Comrades alone. I was definite at Bezwada that the office must in no case be kept in Bombay. But you all were adamant and did not care the least for what I felt and said regarding the same. That attitude pinched me much and I took it no doubt very seriously though for the time being I decided to keep mum. Then came almost 3 months' time in locating the office at Bombay. That was the second pinch felt

by me and it was simply to express indirectly that pinch that I mentioned the effect in my first letter written to the Bombay address, but perhaps you took my remarks merely on their face value and tried to reply in your letter. Now comes the 3rd stage when you mention the 'Salami' etc. In the letter of the 10th you express your resolve to shift the office to some suburban place in Bombay.

Of course you will do whatever you and the rest of the Comrades decide and like. But let me make it perfectly clear that it is too much for me now to keep mum and not to disclose my mind even now. I am definitely of the opinion that the office must be shifted to Calcutta or a place near Calcutta and in no case it should be allowed to remain at Bombay. It must be with the Gen. Secy. I mention circulars etc must be seen by him before they are issued. He must be in close touch with the office. I see no reason why it should be at Bombay at all. It must be in the centre of the Sabhas' activities. In the matter of the office the feeling of the President should be taken into consideration I hold. But so far it has not been done and it is no little thing. I maintain you disregarded my feeling rather so far.

Then comes the organisation of Karnataka Province. I was glad that some one had been appointed by the Gen. Secy. for the purpose. But do you remember what our actual practice has been so far in such matters? It is the C.K.C. which had so far decided as to who should take charge of organisations of a certain area or unit. If the C.K.C. members themselves had begun that work and identified themselves with the same, that had been welcomed by the C.K.C. But all of a sudden I find a new process now. And when I find that Gen. Secy. had almost decided the thing at Bezwada itself, my surprise knows no limit, because in that case he ought to have placed it before the CKC there. He ought to have mentioned at least to me this fact either at Bezwada or afterwards, as we travelled together upto Calcutta after Bezwada. Even after that he could have done it only if he had willed.

I do not know if you have got my letter written on the 5th. Because in that letter I requested you to send the address of the comrade in charge of the organisation of Karnataka. As you did not send this address and as you wrote the last letter on the 10th, I fear you did not get my letter before you dropped yours. Then again I dropped another letter on the 9th. Let me hope you have received both of them by now and so you will admit I am not slow in writing to you. After all I am to take care of other works and letters too that reach me from Provinces and Comrades.

I have written to you on the 9th re:questionnaires and you can hope no more from me in that connection, unless a complete picture is before me.

As for the draft constitution,² I have perused it again and at a loss to understand why so detailed a thing has been prepared which to tell you frankly in my opinion cannot really be worked in all the provinces. In Bihar we cannot accept and work that detailed thing. I tell you. By our experience we have evolved a constitution for us gradually during the last 15 years and you cannot hope to give it up easily. In this matter it is better to invite first the opinion of the Provinces, if you wanted at all to prepare such a draft constitution. I think Gopal Babu⁴ has done it with the consent of at least the Bengal Comrades. but you will find the rest in this connection in my letter to Gopal Babu whose copy is attached herewith for your perusal.

Yours sincerely,

Signed Swami Sahajanand Saraswari

Enclosure

Dear Gopal Babu,

As desired by you and promised in turn by me to you, I have perused your draft time and again given it the thought it rightly deserved. Now I am in a position to express my opinion on it, though this opinion is not the last word by me.

First of all, it appears our approaches to the Kisan Sabha organisation are opposed to each other. You know my views regarding the same which was made out without equivocation at Bezwada. And your draft prepared after that and even after my repeated suggestions to Comrade Bankim and prominent C.P. Comrades here and elsewhere as to how best to accommodate us all in the constitution, leaves not the least ground to think that you can accommodate us. This is my clear reaction after perusing the article 5A (II) and (III). I cannot be a party to the view that the Kisan Sabha is a mere mass organisation of Kisan unity to propagate seriously only its social economic and class programme adopted from time to time and its political resolution and programme are not equally binding on all its members. I cannot really thus be a party to turning the political resolution and the stand of the Kisan Sabha into a huge force with my eyes wide open. If such resolutions and programmes are not binding on its members where is the sense in getting them passed by it. Why not in that case allow complete autonomy to the Provinces in the matter and shut the door of A.I.K.S. for all such things, that will at least be a consistent and democratic attitude to adopt and manner to do things. But even if that much too is acceptable why not lay it down clearly that A.I.K.S. comprising of all units under articles 4(A) shall shun politic. That will be an honest admission of our difficulties and the resultant attitude in the matter. The principle enunciated in that article is bound to shatter the whole discipline in the Sabha despite so many 'ifs' and 'Provisoes' to be found there. Hence, they can not fool persons like myself, if I may be permitted to say so, therefore this is the basic objection to your draft and I can in no way reconcile myself to it.

Then again, in the article after the note there is no meaning in adding 'our union of democratic states'. It is no resolution of the Sabha but its constitution. So it must be unequivocal; of course by a resolution of the Sabha you may explain it in the manner to be found in the note. But when the A.I.T.U.C. constitution too lays down its object is to establish socialist state in India, why should we bother for more of its detail? Why not proceed on that line? After all the Union of states too is a democratic State. Where is then objection. Let the senior organisation of the A.I.T.U.C. show us the way in the matter. We are in no hurry.

Our object lays open the door of the Sabha for all who accept it. So I think there is no need of adding the notes to article and the clause (I) of the article 9A. It will create rather difficulties in the future, I am afraid. It was adopted after much experience and prolonged consideration.

The next point is, your draft contains too much details and it seek to provide for, from, the lowest to the top most unit or unite with all the details and I am afraid it is not easily workable. Rather it is unworkable, and at least we in Bihar cannot accept it. We have evolved our provincial constitution on the basis of the experience gained during the last 15 years and we find no reason to change it. It is very easy to write out things like these on paper. But it is very difficult to translate them into actual practice. And it is not necessary for a unitary constitution to provide for these details. The Congress constitution does not do it.

As regards your suggested difficulties in the Presidential election, I am afraid I cannot agree. In Bihar more than half, nay, two third delegates attend the meeting for that election. But because they constitute the B.P.K.S also, and because the new executive is formed in that

meeting they cannot but attend. So why not lay down that the delegates from a Province shall constitute P.K.S. and the new executive shall be formed in their first meeting as members of the P.K.S.?

And even if you adopt the process you mentioned in your draft which is not practical, I am afraid, and try to elect the President, how to elect the A.I.K.S. members from a Province? How will the delegates in different districts elect these members? They are not divided for districts. So all the delegates must assemble at a Provincial centre for this. And if you provide for getting nominations, first of all the candidates for the membership of A.I.K.S. and send the list to all the districts of these candidates for voting, it will be a lengthy process and will create troubles, I fear.

Similarly why should a Province approach the A.I.K.S. office to fix venue and date for its Provincial Conference and why should lower units approach upper units for the same, as provided for in article 4(b). Is it possible? Is it workable? And what is good of it?

Lastly after the perusal of the draft and mature consideration, I am inclined to the view that perhaps a federal constitution alone may provide us a way out of this problem as we now can — pull on order any one unit. It pains me to write like this and think like this. But it seems there is no other way out.

Sincerely yours,

Signed Swami Sahajananad Saraswati

1 and 2. Not printed.

3 Gopal Halder.

97 A. Rasul to Bankim Mukherji (dt 22.7.1944) (intercepted letter)

Government of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

All India Kisan Sabha

ABDULLA RASUL of the above Sabha, Bombay in his letter dated 22-7-44 (intercepted on 25-7-44) to COMRADE BANKIM MUKHERJI, M.L.A., B.P.K.S., 249, Bowbazar Street, Calcutta says that as the draft Constitution¹ is ready the Sub-Committee and the Central Committee should meet and thereafter the A.I.K.C. meeting may take place. The meetings should begin in the third week of August either at Allahabad or Lucknow. This time is selected in view of the Central Committee meeting fixed for September and the intention of the Punjab Comrade to hold their provincial Kisan Conference in the latter half of September. The writer desires that GOPAL BABU'S (Halder) draft should be thoroughly discussed before the meetings are commenced.

Enclosed is also a copy of a letter² sent to SWAMIJI (SAHAJANANDA) dated 22-7-44. In it ABDULLA criticises the draft of GOPAL BABU (Halder) and agrees with SWAMIJI that a resolution of the Sabha should be binding on all members and units and the phrase 'Union of Democratic States' should be omitted from the draft which should be reduced in length and simplified by the Sub-Committee. He supplies the address of the Karnatak Comrades as — COMRADE D. SRINIVASAIYA,

121, Sultanpet, Bangalore City and says that COMRADE BANKIM MUKHERJI has made a mistake in appointing him to organise the Kisans in that province. He has learnt from JAGAT RAM (SANYASI) that at a meeting of the Provincial Frontier Kisan Committee at which the members were in violent disagreement, a resolution was passed dissolving the provincial Committee. COMRADE KIHUSHAAL KIHAN who was present at the meeting suggested the appointment of the KIHAN SAHIB (ABDUR RAHIMAN KIHAN) to reorganise the Frontier Kisan Committee. A letter has been written to the KIHAN SAHIB for details but no reply has yet been received.

1 and 2. Not printed.

98: Extracts from evidence of Mr M.A. Ispahani, before Famine Inquiry Commission 17.8.1944

Nanavati Papers – List of Literature 2.b.1
[NAI]

S.V. Ramamutry . . . What is the more sure way of getting the produce, from the producer or from the merchants? The merchant can dry up if he does not like your price but the producer cannot. – In Bengal the producer and the local merchants have got closer ties. In other places the producer has district dealings with the Government revenue department. Here the producer has got his local merchant from whom he borrows money when he wants. They are more closely linked in this province than anywhere else. We should abolish the zamindari system before we can bring about those conditions here.

Sir Manilal B. Nanavati: Is there any scope for improvement of this system? – You have got to do away with the zamindars and then make it khasmahal.

Your experience of the last two years is that the zamindars do not cooperate with you? – The zamindars are the biggest culprits. Even today they have got the biggest stocks and they escape because they go as producers . . .

Chairman: Why do you want to do away with the zamindari system? Does it mean absence of staff? – Yes, absence of staff.

Mr S.V. Ramamurty: Can't you have staff even under your zamindari system? One fifth of Madras is under the zamindari system but there is raiyatwari system also. Why can't you have some staff with which you can manage this work? – We have been advocating to build up this staff for the next procurement. Here we will have to depend on Thanas and Union Boards. The Government sub-inspector should go to a thana and he should have a bicycle to go round all the unions. Now there are 6000 unions and it requires a colossal staff to do this work and it is worth building up in order to enable Government to get physical control of the foodgrains.

Chairman: After all we have an autonomous Government here which is a Government very largely controlled by the agricultural vote. Do you think that such a Government could enforce, even if they wish to, to get total procurement? – No. Our biggest trouble in Bengal is that no enforcement is possible owing to party factions here. It will always be there between the one that in power and the other that is not. Both have to depend for their votes on the union members if they are to be elected to the Assembly. Under the present system and in the prevailing conditions I do not know if we can make that enforcement successful.

Chairman: Not even in order to save people from dying? — There have been cases here during the last famine which were most unfortunate. A whole family of four or five members were dying of starvation but in the next house they had food for six months but not spare a morsel of it. This is sometime unheard of but it is none the less true.

Don't you think it an exception to the general rule? — No, I do not, I have been touring on relief work and on purchase work and I found a lot of such unfortunate cases. There is very little fellow feeling and sympathy for the neighbour in this country.

Sir Manilal B. Nanavati: Do you mean to say that Bengal cannot help itself? There is no genius or statesmanship or political wisdom in the country? — Unfortunately, not, it seems so far the present any way.

Supposing another calamity comes, do you think the same thing will be repeated again? — I would not be surprised.

Then it is nobody's business in this country? — They will lay all the faults at another's door.

No attempts were made to appease it during 1943? — I think the newspapers have spoken of that in detail.

Chairman: Do you think if there was a coalition Government, it would improve the situation? — Of course, that is a theoretical proposal. I definitely think that they will be able to do the thing better than what we were able to do up till now.

Sir Manilal B. Nanavati: Do you think that it is not possible? Do you think that section 93 should be applied until a strong man comes to take charge of the whole affairs? — When there is serious trouble we need a dictator.

Chairman: I think it is all high politics . . .

99 Agriculture Income Tax Bill in the B.L.A. (extracts from Casey's Diary dt 17.8.1944)

R.G. Casey's Diary, p. 30

[NMML]

The Bengal Legislative Council is playing up. Government members apparently refuse to sit for the requisite time per day to get the Agricultural income tax bill through. The discipline amongst the members of the Government side is negligible. They are out of control. H.C.M. blames Sir Bijoy. I told the Ministry this morning (and I've repeated it in a letter to H.C.M) that the good name of Bengal — and the possibility getting further subventions from the Centre rests on getting this Bill through quickly. We can rightly be castigated for not bringing the rate of taxation in Bengal more nearly into line with that in other Provinces.

We (SGB, Jean Begg, etc.) went to a Free French film 'Paris after dark' Baux, (French Consul General), received me.



100: Agriculture Income Tax Bill – Talks with Nazimuddin and Suhrawardy (extracts from Casey's Diary dt 18.8.1944)

R.G. Casey's Diary, p. 31
[NMML]

Nazimuddin and Suhrawardy called to discuss the state of affairs existing in the legislative Council over the Agricultural Income tax Bill, which is dragging badly. I told them that I was very dissatisfied with the position – which was becoming a replay of the situation in the Assembly, by reason of the Government not being able to get Government business done. I said that much more than the mere passing of the Bill was concerned. We were pledged to the Government of India to increase our rates of taxation and this was coming about very tardily and reluctantly, and would have a bad affect on the state of mind of the Government of India and of other Provinces, vis-a-vis Bengal. If, as looked probable, we did not get the Bill enacted in time to collect this year's revenue, it would very adversely affect our chances of getting further subventions from the Centre, which I had looked forward to getting. It would also react unfavourably on our ability to get more foodgrains next year from the rest of India.

They asked if I would see Sir Bijoy (President of the Council) – and he was later brought in. I repeated my point of view to him. He expressed himself as quite unable to get the Bill through before the Ramzan – and the Puja holidays follow straight on after Ramzan – which means that the Council cannot meet again until about the 4th October. Bijoy says that an all night sitting would do more harm than good and that it will be impossible to hold a Government majority once Ramzan starts.

Sir Nazimuddin gave me his promise that if the Council were adjourned now (not propaganda), we would get the Bill passed by the third week in October (covering himself with 'Insh' Allah'). I left them saying that I could not pretend to be pleased at the outlook, and that I thought it would react adversely in important directions on Bengal.

101: A. Rasul to Bankim Mukherji (intercepted letter) (18.8.1944)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

All India Kisan Sabha

M.A. Rasul, Dargah Road, Wadala, Bombay in his letter dated 18-8-44 (intercepted on 20-8-44) to Comrade Bankim Mukharji, M.L.A. Bengal Provincial Kishan Sabha, 249, Bowbazar Street, Calcutta enquires if a copy of the latest draft of the constitution¹ (undefined) has been despatched to Swamiji (Sahajajanand). He desires that the matter should be clarified by discussion at a meeting. Regarding a federal constitution he says that he is not very much in favour of it.

In an enclosure² to Rasul from Swamiji the latter wants to know if the comrades of the C.P.I. belonging to the Kisan Sabha are agreeable to a federal constitution of the Kisan sabha and says that it is the only way of coming to an agreement.

In the reply to this letter³ (also enclosed) M.A. Rasul says that meetings of the constitutional sub-committee, Central Kisan Committee and A.I.K.C. should be called to exchange view-points and to come to an agreement on the question of a federal constitution and the dates of meetings should be fixed as 12th, 14th and 17th September respectively at Lucknow. Finally he requests Swamiji to explain the specific character of the changes or additions which are to be introduced in the existing constitution both in its fundamental and technical parts.

1. Not Printed.

2. See Doc 96.

3. See Doc. 97.

102. Extracts from evidence of Dr N. Sanyal, Chief Whip of the official Congress party and Dr A.C. Ukil before Famine Inquiry Commission on 1.9.1944

Nanavati Papers - Vol. III

165. There is another interesting thing I would like to invite your attention to namely, a study by a scholar of the Statistical Institute and a research scholar of the University of Calcutta Mr Ramkrishna Mukherji who had made intensive study of ten villages in Noakhali, voluntarily, with a view to find out what social effects this famine had on that area. The result he has drawn up is rather very interesting. It is going to be published shortly in 'Science and Culture' next month. I have requested him to re-examine some of his conclusions and he has taken the paper back. I have got here the major conclusions. I admit and I have told him that the data on which he draws the conclusions are meagre and therefore his thesis might be called too bold. His conclusions are all the same very interesting. He grouped the population into three classes. Those who were actually destitutes and who had depended on the gruel kitchens, those who were moderately affected and not depending on the gruel kitchens but were receiving dry foodstuff by way of relief and those who were not seeking relief but somehow were carrying on. He found that of about 1000 persons studied, 37 per cent, were in class I, 51 per cent in class II and only 12 per cent in class III who somehow managed to carry on. He found that the effects of the food crisis were immediately reflected in the loss of property. The loss of property between 1939 to 1943 was in class I - 39 per cent, 28 per cent of class II, only 7 per cent. of class III. These figures substantially changed in 1943-44, The class II people lost all. There was practically no loss in class I, because they were mostly landless labourers.

166. There is nothing to show that these villages were typical? - This was one of the worst affected areas.

167. You cannot draw general conclusions? - No, not for the whole of Bengal. It is illustrative

of some of the worst affected areas. He said that about 28 per cent of the total population of that section have become totally landless. 4 percent lost homes and land and 1 percent. even gave up their dwellings. At the present moment 28 per cent were absolutely landless. He found from the records of sales and registration that ornaments and things like that were sold out first, then household utensils then livestock. They tried to cling to livestock till the end, and then cultivated land. That is the order of sales. There were more sales effected than mortgages. But in the first group there had been a large number of mortgages. In February 1943, 98 per cent of class I had resorted to mortgages, that is practically the whole population.

168. This is illustrative of that area? — yes. Then about 5 per cent. of class I emigrated.

103: Extracts from evidence from Mr Somnath Lahiri, Mr Bhowani Sen and Mr Bhupesh Gupta of the Communist party before the Famine Inquiry Commission on 2.9.1994

Nanavati Papers – Vol. III

[NAI]

70. *K.B. Afzal Husain* — You estimate here that through the Provincial Kisan Sabha, one lakh acre of land were added to the cultivated area. How did you estimate these figures? — That was done by Kisan Sabha workers, who themselves did the work. They have surveyed the area.

71. What is the strength of the kisan Sabha? — The Bengal Kisan Sabha has a membership of 2 lakhs in Bengal alone and in different districts, they have thousands and more than that.

72. Are these people competent to measure land? — Oh, Yes. There are also intellectual workers as leaders and organisers.

73. Agricultural statistics of Bengal are absolutely unreliable and you say that a huge staff is required to bring them to a standard where reliance could be placed on them. Do you think the estimate of the Kisan Sabha is more accurate than Bengal Government's? — Oh! Yes. Organisations like Kisan Sabha give better and more reliable statistics than the Government can do. Now suppose a certain area is taken up by a union and it is cultivated. They immediately send the report that we have cultivated such and such area, this is its total length and breadth and this is the total production. Then in the course of the year all such reports are coming in. They are added up and a final report is made.

74. Do you check them? — There are district committees everywhere. The reports have to come through the districts committees and if there is any suspicion, they are asked to check up.

75. This requires a great deal of labour and great expenditure of time and energy. — Yes. But this is their work, growing more food. This is one of the most important work in their village areas.

76. Through these efforts, do you think you have substantially added to the food resources of Bengal? — Not substantially but something. But given better resources and more opportunities, we could have done much more.

77. These one lakh acres would give you 15 lakh maunds of paddy. — Yes. In that sense it is so. Taking the need of Bengal as a whole it is not much. The job is not so much difficult as you think, because what happens is this. If a particular canal, one mile long, is properly excavated or proper bunds are constructed, that saves at least 100 to 500 bighas of land, i.e. in terms of acres, 100 acres of something like that. The huge waste land remains uncultivated. That has to be taken up for developing production. Government can grow much more food by means of digging canals or creating bunds over canals, by helping the peasants to remove saline water from certain areas and if it is done in an organised manner and the money sanctioned for the purpose actually goes for this job. *Mr Sen:* if the digging of a canal, or the creation of a bund over canals, helping the peasants in the task to remove saline water in certain areas, if these are done in an organised manner, it would be helpful and much more food can be grown than is grown now.

78. Government also works in the same manner as far as agriculture is concerned. *Mr Lahiri:* The difference is that the Government does it from the top, we do it from the bottom. In a particular area the land is lying fallow. The people ask us to make a petition for some allowance and they draw the scheme and in this way they improve their own area.

79. You suggest that the Agricultural Department should function in cooperation with popular organisations like the Kisan Sabha? — *Mr Sen:* Yes Our party and the Kisan Sabha have been running a campaign among the peasants for growing more food. There was a movement started in December 1942 which still exists for the grow more food campaign. Volunteers have been engaged and they are doing a patriotic work. Sanghas have been formed and they dig the canals; construct the bund and do other things. They hold meetings in the different areas.

80. Chairman: Your view is that everybody in Government service is inefficient, useless and dishonest? — *Mr Sen:* No, we do not say that. There are efficient officers in Government also, but the whole administrative machinery is such that there is no cooperation between the people and the Government. We draw the most honest people who are inspired by the love of the country in our work and campaign, while the Government officials offer money to some people and they are attracted by that money only.

81. It is a rather wholesale condemnation of your fellowmen. *Mr Lahiri:* — No, you are making a mistake there. It is a wholesale condemnation, not of the people, but of the policy of the Government. It is also a condemnation of the people who are associated with that policy.

82. Do you mean to say that the present Minister of Agriculture does not desire to assist? — *Mr Lahiri:* The psychology of the masses is a complex one. There is no Voluntary cooperation unless a thing is done in a proper way and with an understanding with the people.

83. *K.B. Afzal Hussain:* Some people say that the Grow More Food campaign is only on paper and that nothing has been achieved. On the other hand, according to your showing a great deal has been achieved. — *Mr Lahiri:* We have given figures to show it.

84. So, if this campaign goes on you think that Bengal will become self-sufficient as regards food? — Yes, but in the way in which the campaign is being conducted by us. With a serious effort and cooperation between the people and the Government much results can be achieved.

85. Are you satisfied with the working of the local bodies like the Union Boards, the District Boards in relation to the Grow More Food campaign and generally the administration of the area relating to health, social work etc.? — *Mr Lahiri:* In most cases, these local bodies cannot do much for the simple reason that they have very little funds.

86. *Chairman*: But you are doing much work with less funds. — Yes. But still the feeling of the masses is that the supreme head of these organisations is the Government. Therefore these bodies cannot do what we can.

87. The district board Chairman is a non-official. — *Mr Sen*: Every one looks at the problem in this way that who ever is connected with the administration is connected with the foreign rule. So, there is naturally a mistrust for any official organisation. The Food Committees which were established during 1943 were successful mainly because of the propaganda carried out by the Communist party of India among the villages. Even if the Government is at the head of the administration we have organised these bodies by carrying a campaign with the people saying that they must use those organisations in the interest of the people for the purpose of distribution of food among them, so there is a change of attitude on the part of the people towards the Food Committees.

88. *K.B. Afzal Husain*: Which is the localities in Bengal where your organisation has done the best work? — *Mr Sen*: In many districts, for example Chittagong Noakhali, Dacca, Mymensingh. In food distribution and relief work Grow More Food Campaign, etc., we have done excellent work in majority of Bengal's districts.

89. Can you not be more specific with regard to the particular areas? — *Mr Sen*: For example every sub-division in the Chittagong district you will find our work, also in Susang and Kishoreganj in Mymensingh.

90. *Sir M. Nanavati*: If requisitioning of food has to be resorted to, do you think it is possible to get it in the countryside? — Yes, on condition that there is cooperation between representative bodies of people and the Government. For example there should be complete cooperation between Food Committees and Government officers. And provided also that there is a real surplus in the hands of the cultivator. There will of course be opposition on the part of the holder of stocks, but in that case the Food Committee by means of propaganda amongst the peasants and other people might persuade them to give out their stocks. Actually it was done during 1943 in the month of June when there was a food drive by the new Ministry, and they were able to unearth some hoarded grains.

91. *Chairman*: But you said that the food drive was not successful? — That is over a large part of Bengal. In the majority of cases Food Committees representative of the people were not set up as was done in 1944.

92. *Sir M. Nanavati*: You have stated on page 9 that in certain places where the people and the officials cooperated, very good results were achieved. What are those places? — Mandaripur Sub-division in Faridpur, in North Bakarganj, Susang in the district of Mymensingh and many other places.

93. How did you know which people had stocks? — The local food committee which had on them representatives of the Communist Party and the Kisan Sabha, themselves knew who were the people — the jotedars, the big landlords and very rich peasants — not actually peasants, but very rich people — these people had their stocks; and the officials through the local committees unearthed these stocks. It was done without much opposition, for previous to that our organisation held mass meetings as soon as we came to know that there was going to be a food drive, and explained to the whole people that to keep stocks more than was necessary for one's own needs was a crime amounting to murdering their own people; that anybody who had stocks should produce it, and that if such stocks were not produced it was the duty of other people to forcibly take them away from them. As a result of this propaganda, the people themselves revealed that requisitioning was necessary in their own interest, and that

produced the stocks. In those areas where we are weak, we are not able to hold mass meetings we cannot do any useful work. Of course the police do not allow us to hold mass meetings because of the ban in Bengal against public meetings.

94. Even in this matter of food-drive Government permission is necessary to hold mass meetings? — In all matters permission is necessary to have a mass meeting.

95. But Government give you the permission? — That depends upon the local officials. In Calcutta this year we got permission, but in the whole of 1943 we could not get permission.

96. In the villages? — Not in Midnapore not in Chittagong, not in Faridpur. Generally we started in districts where we could hold meetings, except in Midnapore.

97. Supposing Government wants to requisition stocks from the rural areas and your organisation are given permission to hold meetings to carry on propaganda, you think that you will be able to persuade the people and get their surplus stocks? On two conditions: first there must be cooperation between the officials and the people's representatives body; second . . .

98. Of course the people's representatives would be there? — *Mr Lahiri*: But there should be a Food Committee acting in cooperation with the administration

99. That is you would not displace the local committees, there is no idea like that? — No.

100. If requisitioning has to be resorted to you think there will be no difficulty provided this proper propaganda is done? It is not only a question of propaganda. The Provincial Government must pursue a popular policy, that is, there should be an All Parties representative Food Advisory Board, then there will be confidence in the minds of the people.

104: Extracts from evidence of Mr Bankim Mukherjee, Mr Krishna Binode Roy and Mr B. Guha — Representatives of the Bengal Provincial Kisan Sabha, before Famine Inquiry Commission on 2.9.1944

Nanavati Papers — Vol. IV

[NAI]

2 *Chairman*: You talk about the orders. Whom have you in mind? Can you define a hoarder? — Who is a hoarder? The traders generally. In villages of course there were some big jotedar, but not the peasants,

Not the small cultivator? — No

The large cultivators? — Yes

3. And the traders? — Yes. In 1943 it was mainly the traders, though during the *Aus* crop the rice cultivators that is, jotedars, those who shared the crop came in. The *Aman* crop came into the market early and the traders managed to get every grain.

4. Where do you think they hoarded, in Calcutta? — Mainly, in Calcutta, but also in the mofussil towns.

5. In the mofussil, in the godowns? Or was it in the hands of the cultivators? — It was in godowns.

6. Do you think there were large stocks in godowns all over the country? — In the mofussil towns up to May and June, till the drive.

7. Large stocks both in Calcutta and in the mofussil? — Yes.

8. What did they do during the drive? — They tried to send it out.

9. Did they succeed? — They succeeded in hiding.

10. They did not succeed in sending it back? — Only partially. From March to May our volunteers were trying to get hold of the stocks, when they were taking the stocks to the stations, etc. The police also was harassing the volunteers when ever they tried to stop the foodgrains.

11. You said that they succeeded in hiding. Is it the cultivator or the stockist? — The stockists.

12. How did they hide? — In godowns. The godowns were not open to the public. *Mr Roy*: The anti-hoarding drive which took place in June 1943 did not take place simultaneously in the city as well as in the mofussil. The result was that before the drive in the mofussil was commenced in the first week of June 1943, all the papers said that the drive ought to have been simultaneous. At the time substantial portions of the stocks were sent to Calcutta.

13. There was then the difficulty of transport. It was not easy to obtain transport. But *Mr Mukherjee* has just suggested that it was hidden. I want to know how the stockists hid it. The cultivators can hide it. *Mr Mukherjee*: This was the month of June and Marketable surpluses were purchased by the traders long before June. Practically substantial stock purchased in March and April had already been transported.

14. Do you think stockists in the mofussil had not stocks on the occasion of the June drive? — *Mr Roy*: Not much. The Government anti-hoarding drive procured only about 80,000 maunds or so mostly from jotedars and rich cultivators. *Mr B. Mukherji*: I take the view that by June they had succeeded in transferring as much as possible but even in June there was some stock in mofussil towns. Even in November people were getting rice at the rate of rupees 60 to 80. So, there was some stock. We found that in the villages there was no black market. It was only in urban towns that one could get rice from the black markets. We have not had any report of cultivators selling at higher prices.

15. Do you think all the cultivators disposed of their entire *Aman* crop by the end of May? — Yes. Except the richer few. In villages the cultivators cannot hide stocks from their co-villagers. . . .

[Omitted: Paras 16 to 26 — Ed.]

27. What do you think should be the fair price for paddy at the present time. You are kisans and you must know that? We suggested the price of rice at the beginning of 1944 when there was plenty of *Aman* crop. We suggested that minimum and maximum price of 10 to 13 rupees.

28. There is great difference between 10 and 13. — It depends on the varieties of rice. We want particular price for a particular quality.

29. You contemplate ten to thirteen rupees according to the quality of rice. Do you think ten to thirteen rupees is good price for *Aus* crop? — Yes.

30. How do you calculate ten to thirteen rupees? — While calculating we take into consideration the prices of such necessities of the cultivator as kerosene, salt, cloth and so on and so forth. We take into consideration his requirements of other necessities like cloth, kerosene, sugar, etc and after taking these into considerations we calculate the cost of rice that the cultivators grow — In the pre-war days the prices of rice was Rs 4 to Rs 5 a maund.

Unless the prices of essential commodities can be brought down, it will be difficult to reduce the price of rice. We suggested that standard cloth and other things which the peasants need should be made available to the peasants at controlled rates. We contemplated that they should be gradually lowered down. So we suggested Rs 10 to 13, and , at the same time, we had this idea that standard cloth should be made available to the peasantry and kerosene and salt should be made available. Even then we had to persuade the peasantry to accept that price. There was discontent, but we succeeded, in our persuasion. We think there was some question here. In reply to that a *golmal* was being created among the peasantry that they should not sell to the Government agents and at fixed price. But we carried on a huge campaign amongst the peasantry asking them to sell to Government and asking Government to make procurement in cooperation with People's Food Committees.

31. *Mr Ramamurty*: When rice has to be taken from your surplus areas to deficit areas, what is the method of procurement that you favour? At present Government have got four chief trading agents. They buy as much as they can get at prices fixed. Are you in favour of the continuance of this system? — We ask them to purchase with the cooperation of the food committees.

32. Whom do you want to purchase, the trading agents? — Yes. They should procure with the consent of the local food committees.

33. The trading agents employ sub-agents? — Yes.

34. You want the sub-agents to cooperate with the food committees? — Yes. We do not want any individual peasant to sell anything without the knowledge of the food committees. That would be the only non-official check. The people would know how much grains have been actually sold from this particular areas. Nobody knows now.

35. Supposing a certain quantity is needed for your deficit areas from the surplus areas and that quantity is not offered to the trading agents at the price that is given. How would you get the quantity that is actually necessary? Supposing a deficit area requires 300,000 tons and the trading agents going to the market can only get 200,000 tons from surplus area. They have to make up 100,000 tons. By what means would you get this? — Of course, we cannot get it.

36. Your people will starve. There is a surplus of 300,000 tons or more in this area and the cultivators do not offer it for sale to others, would you be prepared to take it by requisition? — *Mr Roy*: We would first ourselves go and persuade the peasants to give, but if they do not bear our persuasion, and procurement of requisite quantity, fails, Government officers would have to requisition it. But we believe that non-official organisations will be able to get all that is necessary. Requisitioning must not be resorted to without trying popular cooperation through All Parties' Food Committees.

[Omitted: Paras 37 to 56 — Ed.]

57. *Sir Manilal Nanavati*: How many members have you got, the kisan Sabha? — *Mr Roy*: The Kisan Sabha in Bengal has a membership of 1,78,000. It is a mass organisation.

58. All over the province? — In all the 26 districts.

59. Functioning properly? — Yes

60. They are prepared to carry out the programme that you have laid down. — *Mr Mukherjee*: Yes

61. They are very keen on this cooperative movement? — Yes.

62. Have they any societies of their own these Kisans: — Wherever we have influence in every village there is a Kisan Union.

63. They have not started cooperative societies? — Some have, and some not. But, as you know, the Food Committees have provided for consumers' cooperative stores, but as a matter of practice these stores are not encouraged. Individual dealers get preference and so a large number of cooperative is not possible.

64. There are many difficulties in getting Government assistance in these days. Have not you brought this to the notice of the Minister of Agriculture who is one of the most sympathetic man? — *Mr Roy* : I have done it in Chittagong. We waited on the Minister of Agriculture. He himself could not help. I have given an instance in Chittagong where the agricultural department urge the local authorities for distribution of cattle loan.

65. *Mr Afzal Husain*: Are you in favour of distribution of these loans? — Yes.

66. Then you say these loans never reach the cultivator? — 'They reach the cultivator ultimately; the money still awaits transmission. I have said that the money has not reached the cultivator at the proper time of growing food. Government makes large provision in their budget for distribution of these loans, but only a small amount is being distributed in actual practice.

67. You have complained about the seed that is distributed; you say that the quantity is not enough and the quality is bad. Then why have such seed? — We ask for better seed from the Government, that is all.

68. *Mr Ramamurty*: What is the line of division and the ideological difference between the Kisan Sabha and the Communist Party. So far as peasants are concerned, you are both up together? — *Mr Mukherjee*: No. In the Kisan Sabha there are other organisations which do not belong to the Communist Party. The ideological difference between the two is that the Communist Party is composed of the most advanced section of the peasants and workers and tries to guide and influence the mass organisations through them while the Kisan Sabha being composed of all strata of peasantry and being guided by various political groups and parties conform to the agreed politics of the various trade unions.

69. *Chairman*: You are not in favour of the cancellation of rights in land? — We are, but not in the case of peasants. Every one except the peasant? A very pleasant prospect for the Kisan!

70. *Mr Afzal Hussain*: You talk of oppression of peasantry in Government purchases of *aus* paddy in September and December, leading to corruption and supporting hoarders in the black market. How was the peasantry oppressed? — The purchase was made in this way: Government directed the District Magistrates to effect these purchases. At that time no procuring agents were appointed.

71. *Chairman*: What time was this? — That was September 1943. *Aus* purchases. Subsequently agents were appointed. But originally the District Magistrates used to purchase. Now, we said these purchases should be made with the cooperation of the local people and all party organisations. But that was not done. The result was that unscrupulous people created the black market. For instance, supposing they were asked to purchase 2,000 tons, they purchased 2,000 tons all right, but they sold 1,500 tons out of those 2,000 tons to the black marketeers, and only showed 500 tons as having procured and then they complained that they could not purchase rice and required official help for further procurement. That is how these purchases were made. We made protests to the District Magistrates.

72. When was this? — This was in September and December 1943.

73. There was no purchase by District Officers during the *Aus* procurement scheme? — Yes, they were purchasing.

74. No, it was done by agents? — That was subsequently changed; in this matter also the officials were directed to help those agents.

75. Quite so; they were purchasing through the District Officers who wanted to help the agents in their purchases?

76. *Mr Afzal Hussain*: If there is any procurement through the same agency will there be oppression again? — Yes if purchases are not with people co-operation.

77. How to get that cooperation through food committees? — Yes, the all parties food committees.

78. As they exist today? — In Bengal all parties food committees have been set up since April-May. In the formation of the committees there have been corruption and irregularities. But the principle on which these committees are being formed we consider wholesome and ought to continue.

79. How many committees are there? — 53,000 village committees. Then there are the District Committees. The sub-division committees, the Jute circle committees, the Union committees and the village committees.

80. *Chairman*: A whole hierarchy of committees — *Mr. Mukherjee*: The Minister for Civil Supplies held a press conference starting the scheme for *Aus* procurement. There I suggested that purchases ought to be generally through the cooperation of food committees. Otherwise, I thought it would not be possible to procure all the crop. They said it was simply a fad of the communists. But the expected quantity could not be procured and the sad failure proved our contention.

81. *Mr Ramamurty*: Which would you prefer for procurement, the food committees or the cooperative societies? — The food committees.

82. The committees would be formed on an all parties basis? — On that principle, of course. We do want certain changes. We want that from the centre there should be all parties cooperation a Provincial Food Council.

83. *Chairman*: You want a provincial advisory committee? — Yes.

84. You recognise that it can only be an advisory committee without any executive functions? — Naturally. The Minister has advisory powers but carries out his wishes also. But it is very difficult to draw the line.

85. It is quite easy to draw the line. The Minister is an administrator. The Advisory committee does not administer. Do you intend that the advisory committee should have power to administer or only be advisory? — We want it to be advisory and its advice being accepted.

86. *Mr Afzal Husain*: You know no business is run by honorary workers. How can you posses an administration run by honorary workers? You have paid organisers for your own party? *Mr Roy*: Most of them are voluntary, but of course we give wages to some.

87. *Chairman*: It is quite true that no business can be run by purely honorary officers.

Mr Ramamurty: The cooperative societies do their work by honorary workers.

Mr Afzal Hussain: Most of the work is done by the paid employees.

Chairman: It depends on the size of the society — *Mr Roy*: The village food committees are run by volunteers. *Mr Mukherjee*: In the villages people have enough leisure and are accustomed to do honorary social work.

88. *Mr Afzal Hussain*: You suggest that everywhere the Department should work with the cooperation of certain representatives of the people. But our experience is one gets people who are not paid for their job cannot be expected to give much time to the job with the result it is the paid people who work and the honorary people sometimes come sometime do not.

What is the remedy you will suggest? — *Mr Mukherjee*: If I suggest the real remedy we shall have to enter politics. We must have a National Government.

89. *Chairman*: A National Government too must have paid servants? *Mr Roy*: In that case the officials will be trusted by the people.

90. *Mr Afzal Husain*: You mention a great deal about corruption and so on. What is the remedy? — The remedy is peoples cooperation, people having some status.

91. But corruption goes on only with people's cooperation? If there were no people to pay bribes there would be no corruption? — There is cooperation between dishonest people and the officials but no cooperation between honest people and honest officials. We want cooperation between honest people.

92. If only your party would concentrate on removing corruption from villages things would be much better? — Most of us would be in jail if we had done anything like that.

93. *Mr Ramamurty*: How is it that we hear so much of corruption only in Bengal? — Because of the famine situation.

94. Corruption is a recent growth? — There are some amount of corruption everywhere but the phenomenal rise of corruption in Bengal is of course very recent.

95. *Mr Afzal Husain*: It was a food famine and moral famine? — Yes.

96. *Mr Ramamurty*: If it confined to a particular class or to all? — All Europeans, Hindus, Muslims, high officials, low officials and so on. No doubt there are honest officials.

97. *Chairman*: Are there corrupt people even among Kisans? Yes even among our party members we found that certain people entrusted with relief saw some of their families die out of starvation but did not make any special arrangements for them. We found in Dacca some of them made special arrangements for their own families and we had to sack them. Thus we cannot say that only a particular group is corrupt. *Mr Roy*: The hierarchy of dealers generally from the village to the city, they and the officials, together carry on corruption.

98. *Sir Manilal Nanavati*: Businessmen have been a corrupting influence? — Yes. They have most to gain. Honesty has been eliminated during these years. A friend of ours owns a chemist's shop refused to purchase his stock from the black market and in six month time he had to close his shop. No medicine was available.

99. *Chairman*: Can you account for this wholesale moral deterioration? Government fixed the price and you cannot get the articles? *Mr Mukherjee*: Government has no stock.

100. That is not the reason. I have been in England. The same practice is done in England. Prices are fixed, for say tooth paste, fish, vegetables, etc. Government has no control over supply. Yet the black market is practically nil. Here the real cause is political. There is a small section who consider it patriotic to create discontent and put as much obstacle in the way as possible. The general people used to look upon control measures with distrust because of their dislike for bureaucrats acquired from lifelong experience. I presume it is this atmosphere which is responsible to ascertain extent.

101. You attribute it to the atmosphere of politics? — Yes. In England everybody feels it is patriotic to see there is contentment. Here people think it is patriotic to create discontent.

102. In England everybody does not feel it patriotic but feels he must not pay more than the fixed price. The remedy against this would be all parties' unity. In Britain although there was a clear majority for conservative party, a National Government was formed to meet the exigencies of the war. But here there was not united ministry even during worst days of famine.

103. Why could you not get a united ministry? — We have given the reasons in our memorandum. If the last Governor had only waited for 7 or 8 days before taking recourse

to Section 93, there would have been a greater chance of a united ministry. I think Nazimuddin had got to start under an handicap, because he was asked to take charge after section 93. If he refused that means that a popular party is to accept responsibility and if he consents it means that he is cutting off from the refusing other party. Already Fazlul Huq's party was losing its support and if the ex-Governor had only waited for a week, the other party would have come. *Mr Roy*: the feeling was that the officials did not want the parties to unite. *Mr Mukherjee*: It is not a question of feeling. It is a question of fact. Even now on the eve of Gandhi-Jinnah settlement meetings were banned in so many places all over India.

104. *Mr Afzal Hussain*: Some people have said that because prices have gone up and there are not many consumers articles to buy, the farmer can easily satisfy his needs by selling a little portion of his produce and therefore he can consume more than what he used to do. What do you think of this? — *Mr Mukherjee*: You ought to know the anatomy or social cross sections of their province. There are no large number of large farmers that is who produce more than they need. They will be 5 per cent. of the people. Again there are some 5 per cent of people, big jotedar, those who share the crop. The rest mostly have not got enough to last for even 12 months. It is enough for only six or seven months.

105. *Chairman* ' These 90 per cent, what do they live on? — It is really a mystery how they live. They borrow.

106. They cannot go on borrowing for ever? Ultimately they are ousted from their homes They go on borrowing and the debts are accumulated.

107. I suggest you are giving exaggerated proportions? — If you see the change over for the last 15 or 20 years, you can know it. There are large numbers of transfers. Quite a large percentage of the peasantry are losing their holdings. Of course we have not got any recent figures, published by the Government. *Mr Roy*: It is, practically happening all over Bengal. The rural people get loans of paddy from the mahajan.

108. It is not possible for anybody on the face of this earth to live for ever on borrowed money? — *Mr Roy*: The result is that expropriation is going on. We have given you a chart.

109. I do not disagree with you generally, but I do not agree with you as regards 10 per cent and 90 per cent? *Mr Mukherjee*: In the summer people live on mangoes for some months. They take rice only for a few days in a month. They live on jack fruits, sweet potatoes and various other things of that sort.

105: Sahajanand Saraswati to Indulal Yagnik, 7 Sep. 1944

Indulal Yagnik Papers - File No.125
[NMML]

Gopalpur, Naubatpur
dt. 7.9.1944

Dear Indulalji,

Rasul¹ and Bankim² wanted to hold the meetings of the constitution Committee C.K.C. and A.I.K.C at Lucknow on the 12th 14th and 17 September respectively. But I refused to agree

to the proposal unless there was an informal agreement on the basic points or I know at least their mind on those points.

Laxminarayan has revived his All India Kisan Congress at least on the paper. Another organisation has been formed at Poona 'All India Agriculturist Association' by name.

These days you keep mum for a long time generally, why? Did you get the copies of my detailed criticism in two parts of the draft constitution? But you expressed no opinion on the same.

How long will it take to relieve yourself fully from that sale and purchase business.

Sincerely Yours,

Swami Sahajanand Saraswati

1. Abdulla Rasul
2. Bankim Mukherji

106: Baba Bhag Singh to Bankim Mukherji (intercepted on 13.9.1944)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 521/44
[Bengal State Archives]

Intercepted letter – Copy of an English book post letter of 1st September 1944, intercepted at Bow Bazar Post Office on 13-9-44 with two enclosures.

From Baba Bhag Singh Canadian, Chairman Reception Committee, the Punjab Provincial Committee, 114 McLeod Road, Lahore.

To Comrade Bankim Mukherjee, General Secretary, All India Kisan Sabha, 249, Bow Bazar Street, Calcutta.

Letter head – The Reception Committee, Sixth Annual Session of the Punjab Provincial Kisan Committee.

Provincial Headquarter
114 MC. Leod Road
Lahore

Dear Friend,

We invite your presence at the 6th Annual Session of the Punjab Provincial Kisan Committee to be held in the heart of freedom loving Doab, at village Jandialal in Jullundur District on 23rd, 24th and 25th September, 1944.

The Punjab Kisan Committee, as a section of the All India Kisan Sabha is the organised body of the Punjab Peasants. Its regular membership exceed 150,000 and has over 1200 local committees.

Its Annual Session will be attended by more than 75,000 kisan visitors and delegates. This session is taking place at a time when the famine of food and freedom has already taken a toll of millions of lives and it grimly occupies the mind of the people of India. The Patriotic

Kisan, with his tradition of sacrifice and heroism as a natural fighter is today in the forefront of the Battle for bread. In this battle he has his own problem as a patriot and peasant.

The solution of the political deadlock, grain procurement schemes, grow more food policy, inefficient control machinery, incidence of Inflation, land revenue, water rates, sinking water level and water logging — all major problems will be under deliberation.

To this session we extend you a warm welcoming invitation and hope that you will reciprocate it by your presence as our guest.

1st September

Yours sincerely,

Baba Bhag Singh
Canadian

Chairman
Reception Committee

Programme

Flag hoisting, Delegates and Visitors Sessions

Supplementary meetings: States' Peoples' Session

Civil Liberties meeting

Poets and Writers Forum Womens' Self Defence League
Session

Lectures — the World today series

Cultural — Dramas, Folk Dances, Patriotic Rural Songs

Friends of Soviet Union

Exhibition of 'Life in Russia'

Cattle Show, Wrestling

107: Observaion on Bengal Agriculture (extracts from Casey's Diary dt 17.9.1944)

R.G. Casey's Diary, pp. 73-4

[NMML]

September 17th

I have the impression that the Noblemen and Zamindars of Bengal are almost without exception devoid of any sense of public duty.

Bengal cultivator shares the Worldwide tendency of all farmers to exaggerate his fears of the future and to intensify any hard luck story that is going about.

Uncertainty about health is probably the one real bar standing in the way of quite a good standard of content (as apart from standard of living) on the part of the Bengal cultivator.

I wonder why 'Yarn' always pronounced'yern' in Bengal?

The inefficient looking hoe continues to be used in Bengal because cultivators don't wear boots and so can't use a spade.

108: Extracts from Fortnightly Report from Madras for the first half of September 1944

File No.18/9/44 – Home Poll (I)

[NAI]

Communists and Labour: Communists have been busy as before doing propaganda generally for the Gandhi-Jinnah talks. This has not diverted them however from propaganda in particular spheres, especially on the food problem and among kisans. In Malabar they continued their meetings in connection with District wide rationing and urged the constitution of village committees which, according to their views, are necessary to check the work of the village accountants. Another demand made is allowance for payment of agricultural wages in kind. In Guntur they are reported to have formed food councils at several places and have been indulging in a good deal of undeserved criticism of the local officials, since they can attract crowds more easily this way.

The All-India Kisan Day was observed under Communist auspices in a number of places. Processions and public meetings were held and in Mannargudi in Tanjore district, flags and placards were carried, with slogans 'Long Live Revolution', Release National Leaders and 'Down with Fascism'. In Tanjore a Soviet Bengal Famine Exhibition was also held under the auspices of the local district Communists' Committee which was attended among others by the local Congress leader, Mr Bhuvarachaya Ayyangar. Pictures relating to the Bengal famine were exhibited and a drama was also staged depicting its horrors.

In one or two places especially Chittoor district Rangites have been busy doing anti-Communist propaganda in the course of which they denounced Communists as traitors and 'Agents' of the British Government.

109: Sahajanand Saraswati to Indulal Yagnik

Indulal Yagnik Papers – File No.25

[NMML]

President
Swami Sahajanand Saraswati

Shri Sitaram Ashram
P.O. & Tel. Bihar BIR
Patna

Date: 26th September, 1944

No.

Dear Indulalji,
Thank you for the P.C. of the 17th. I am glad you have decided to resign from the Sale and Purchase Union presidentship, and let me hope by the time these lines reach you, your resignation will have been duly submitted.

I am now feeling better and have begun moving in the districts, But I do not hope to reach Bombay, before the first week of November. October is impossible. For the whole of that month my programme is already fixed, and as I have got no immediate trouble in my teeth I have no option but to accept that programme.

One of our best Comrades, Salik Singh of Champaran, was murdered brutally by the henchmen of some zamindars on the 6 Sept. 44 at about 11 a.m. while on his way to the office of the D.K.S. near Motihari. His demise has created a big gap in the rank of our workers. He was the President of the D.K.S. as also a member of the Provincial K. Council.

Our programme and plan of future work cannot and should not be kept in abeyance because of the high hopes created in the people by the Bombay talks which may continue for long. Frankly speaking I have no such hopes in those talks. But hopes or no hopes we must prepare our future plan of action without delay and for that our meeting seems necessary. why not meet Sjt. N.M. Joshi and ask his opinion and suggestions regarding a detailed constitution of the K.S. on Federal lines. It is a very difficult task to apply that constitution to the K.S. The condition of the labour unions are quite different and they may be grouped together. But for a moment its application to the K.S. And yet we must be ready with a complete draft on that model. Because of my dental troubles I had no time to think over it seriously and in a constructive manner.

Yours sincerely,

S.S. Saraswati.

110: Extracts from Fortnightly Report from Punjab for the second half of September 1944

File No.18/9/44 - Home Poll (I)

[NAI]

The Kirti-Kisan element is, however, undoubtedly extending its influence and is becoming a force to be reckoned within Provincial Politics. Its appeal is mainly, as before, to the Sikh agriculturist, but where it was previously almost entirely communal and economic it is now tending to become increasingly political. This change particularly noticeable at the 6th Provincial Kisan conference held from September the 23rd to 25th at Jandiala in the Jullundur district, a centre of many previous subversive movements and the home of many returned Sikh emigrants. Intense propaganda had preceded this conference for some two months and the results were undoubtedly encouraging to the organisers. The audiences varied from 5,000 to 12,000 and consisted almost entirely of Sikh peasants; in some of the sessions there were large numbers of women present. Collections for expenses realised were about Rs 14,000 of which not more than Rs 5,000 were spent, leaving a comfortable balance for further party work. The only miscalculation in the organisers hopes seems to have been in the reception which their propaganda jathas from neighbouring districts would receive on their way to Jandiala. With few exceptions this was surprisingly cool; the villagers were uninterested and the Akalis refused the use of the Gurudwaras for meetings.

111: Extracts from Fortnightly Report from U.P. for the second half of September 1944

File No.18/9/44 – Home Poll (I)
[NAI]

Another matter discussed at the meeting in Allahabad was the working of the United Provinces Tenancy Act, particularly as regards ejectment of tenants by zamindars, and it was resolved that Congressmen in districts should take steps to try and prevent such ejectments.

112: Extracts Fortnightly Report from Bombay for the second half of September 1944

File No. 18/9/44 -- Home Poll (I)
[NAI]

Communist and Pro-Communist Activities

For some times past, communist workers of Ahmednagar have been busy enrolling members for the Kisan Sabha. As part of enrollment drive a 'Kisan Day' was observed in some of the villages of Sangamner and Akola Talukas on the 1st September. The hoisting of red flags, private lectures on Kisan unity, and the enrollment of members were the prominent features of the celebrations. It is understood that some 1000 members have so far been enrolled in the District. Communist workers in Gujarat and West Khandesh were busy collecting funds with a view to giving help to the distressed in the flood-stricken areas. The Bombay Committee of the Communist Party of India held a public meeting attended by 500 persons on the 17th September where speeches on the usual lines wishing success to the Gandhi Jinnah meeting and stressing the need for Hindu Muslim unity and for a National Government at the Centre were made. At a meeting of about 1,500 persons held at Jalgaon in East Khandesh District on 8th September local Communist leaders supported Mr Rajagopalachari's formula for the Congress League settlement.

113: Extracts from Fortnightly Report from Madras for the second half of September 1944

File No. 18/9/44 – Home Poll (I)
[NAI]

Communists – Communists have been busy strengthening their Kisan organisation in Guntur and Vizagapatam districts. In Guntur they have organised local taluk ryots' association and a conference of local labour unions, both of which were mainly concerned with passing

resolutions supporting the Gandhi-Jinnah talks and making the old plea for the release of political prisoners. In both districts they have also been trying their best to counteract the effects of the rival Rangite Organisations who have also been doing propaganda in their turn.

114: Govt. of Madras to all Provincial Govts

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Confidential

Government of Madras
Public (General) Department
Letter No. 42487/44-2

From
J.P. Brown Esq., C.S.I., C.I.E., I.C.S.
Chief Secretary to the Government of Madras

To
All Provincial Governments and Administrations

Dated. Fort St. George, the 9th October, 1944

Sir,
Political Agitation – Civil Disobedience Movement Security Prisoner – Ranga, Sri N.G.
Release.

I am directed to enclose for information a copy of the Government's proceedings No. 2934, Public (General) dated 6th October, 1944 in which this Government have ordered the release of Sri N.G. Ranga who was detained in November 1942 in connection with the recent Civil Disobedience Movement.

Yours obedient servant,
Signed
for Chief Secretary to Government

Copy of G.O. Nos. 2934 Public (General) dated 6th October 1944

Political Agitation – Civil Disobedience Movement Security prisoner – Ranga Sri N.G. Release
Ordered.

Order

His Excellency the Governor of Madras is hereby pleased to direct that the security prisoner

Sri N.G. Ranga detained under the orders in Chief Secretary a proceedings No. 57188-14, dated 8th November, 1943 be released immediately.
(By order of His Excellency the Governor)

J.B. Brown,
Chief Secretary to Govt.

To the Superintendent, Special Jail, Tanjore
To the Inspector General of Prisoners
To the District Magistrate of Guntur
To the District Superintendent of Police Guntur
To the Superintendent of Police, Special Branch, C.I.D.
To the Government of India. Home Department (with reference to their letter NO. 3/12/44-Poll (I) dated 29-9-44)

115: Home Secretary, Govt. of Punjab to all Dy Commissioners

Govt. of Punjab (Pol) File No.H/13
[Punjab State Archives]

From
A.A. MacDonald, Esquire, O.B.E.I.C.S.,
Home Secretary to Government, Punjab

To
All Deputy Commissioners in the Punjab

No. 5728-57-ADSB

Dated Lahore, the 12th October 1944

Sir,

I am directed to say that it has come to notice that the Punjab Communist Party and its subordinate organisations, such as Punjab Kisan Sabha, have recently been indulging in objectionable propaganda directed against the Police and other Government officials by staging dramas, depicting acts of torture, high handedness and other mal-practices alleged to have been committed by them. Such propaganda inevitably undermine public confidence in Government and encourages defiance of law and order. Moreover, its meaning is readily understood by illiterate members of the public who attend such performances in large numbers

I am therefore to suggest that in those districts where dramas of this nature have been or are likely to be staged an order similar to that recently passed by the District Magistrate, Jullundur (copy enclosed) should be enforced.

I have the honour to be
Sir,
Your most obedient servant
A.A. Macdonald
Home Secretary to Government Pb

Enclosure

Order

It has been brought to my notice that dramas depicting alleged acts of torture, high handedness and other mal-practices by the police or other Government officials have been, and are going to be performed in various places in the Jullundur district. As the performance of such dramas before the public is intended or is likely to bring into hatred or contempt or excite dis-affection towards His Majesty Police Force or Government established by law in British India, and as such, it amounts to a prejudicial act as defined in Rule 34 of the Defence of India Rules, I, Ahsan-ud-Din, Esquire, I.C.S., District Magistrate Jullundur, by virtue of the powers conferred upon me under Rule 43 of the Defence of India Rules, hereby render that whosoever, after the notification of this order:

- a) takes part in any such performance or
- b) in any manner assist in conducting any such performance, or
- c) is, in willful disobedience to this order, present as a spectator during the whole or any part of any such performance, or
- d) being the owner or occupier or having the use of any house, room or place, opens, keeps or uses the same for any such performance or permits the same to be opened, occupied or used for any such performance.

Shall be deemed to have contravened the provisions of Rule 43 D.O.I.Rs and shall be liable to the penalty thereunder.

Given under my hand and the seal of the court.

Signed
District Magistrate
Jullundur

116: Sahajanand Saraswati to P.C. Joshi
(intercepted letter)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Secret
CID

Special Branch (I)

Bombay 25th Oct 1944

In reply please quote No. 1138 dated 25-10-1944

Interception Report

(The Secrecy of the interception may kindly be safeguarded)

- 1. Post Office of Interception: Girgaum, Bombay
- 2. Date of censorship: 22-10-44

3. Sender's name & Address: Swami Sahajanand Saraswati AIKS
Shri Sitaram Ashram
PO & Tel. Bihar EIR Patna
4. Post mark and date: Bihar, 19-10-44
5. Date of letter: 19-10-44
6. Language of letter: English
7. Addressee's name & address: Com. P.C. Joshi, Secretary
Communist Party of India,
190B Khetwadi Main Road
Bombay 4
8. Whether withheld or delivered: Delivered
9. If delivered, copy kept or not: Copy Kept.
10. Name of Censoring Officer : Sub-Inspr. Salvi, Special Br. 1,
CID, Bombay
11. Additional information & remarks:

Dear Joshiji,

Your letter of the 30th September. Thanks. I am rather late in reply as being away I could read it late.

I am sorry, I may not come to Bombay before the middle of December next and for the examination and cure of my diseased^d teeth I may have to go to Calcutta. When writing last to you I had hoped that my old friends and acquaintance who had very eagerly invited me to Calcutta would not mind much if I did not go there and proceed instead to Bombay. But now it seems my calculations were wrong and they are in no mood to allow me if they can to go to Bombay. In fact two of them have recently seen me here and insisted that I must not fail in visiting Calcutta. Hence I feel helpless

It is why I have written to Com. Bankim Mukherji to call the meeting of the constitution sub-committee and the C.K.C. at Calcutta in the 3rd week of November next. Please therefore, excuse me. But if the constitution Sub committee and C.K.C. meetings at Calcutta are able to prepare the ground for the A.I.K.C meeting, it must be held at Bombay, in the middle of December next and I must come there at that time. But even if the meeting is not possible I am bound to come to Bombay. Unfortunately I had entertained no high hopes in the Bombay Talks and this I had done on the basis of my past experiences and studies of Mr Jinnah and in particular, as a result of his written speech or report after Srinagar at the time of the meeting of the League Council at Lahore. I have followed him very carefully and minutely since the Nagpur Congress and I am constrained to admit that different from that of many people and in my opinion, at least for some time to come, Mr Jinnah is the League as Gandhiji is the Congress. Hence this failure may be national disaster to many but not to me. It surely does not mean that it has not harmed the country's cause. In fact it has done an immense harm to it. But it is quite different at least to me, from its being called a national disaster. I may be wrong, but this is my view.

Hoping this finds you all in cheers.

Sincerely yours,

Signed Swami Sahajanand Saraswati

Secret

Copy forwarded with compliments to:

1. The Asstt. Director, Intelligence Bureau, Home Department, Govt. of India, New Delhi
2. The Dy. Commissioner of Police, Special Branch, Calcutta for information

for Dy. Commissioner of police
Special branch (I) CID
Bombay

117: Extracts from Fortnightly Report from Madras for the first half of November 1944

File No. 18/11/44 - Home Poll (I)

Communists: Communists appear to be greatly perturbed at the attempts now being made by Congress leaders to exclude them from any participation in their activities. In Madras City, Congressmen are making determined efforts to weaken labour from Communist influence. At a committee meeting of the Tramway Workers which was attended by Mrs Rukmani Lakshmipathi and other Congressmen, allegations were made against the Communists that they had misappropriated the Union Funds. Tramway workers are shortly to decide by a secret ballot whether the Communists should be allowed to remain in the Union. Communists, on the other side, are continuing counter propaganda, and in one case in Malabar there was an open clash, when they broke up a meeting of Congress supporters at Badagara. They are also continuing their efforts to promote Hindu-Muslim unity and to bring about another meeting between Mr Gandhi and Mr Jinnah. The 'Russian Revolution Day' which was celebrated recently gave them an opportunity for processions and meetings.

The same rivalry is being seen among Kisan Organisations. In Chittoor it is reported that Congress leaders are wooing the Ranga Kisan group and dissociating themselves from the Communist controlled Kisan Sabhas. In West Godavari district a Kisan (Congress) Conference was held recently, presided over by the president of the Andhra Provincial Kisan Conference, and speeches were made emphasising the necessity to keep out Communists. It appears likely that the Congress and Rangites will form a common front with the object of destroying communist influence over kisans.



118: Extracts from Fortnightly Report from Orissa for the first half of November 1944

File No. 18/11/44 – Home Poll (I)
[NAI]

Provincial Politics: A meeting of the leading Congressmen of the province has been called at Cuttack for the 19th November. It has been convened by Mr B.N. Das, M.L.A., Balasore Congressmen have decided to contest District Board elections. It appears that collections for the Kasturba Memorial Fund are not proceeding smoothly. It is thought that the collection charges are unnecessarily high, and it is even contemplated to take legal action against some of the collection agents. The Communists have been attempting to recruit members for the Kisan Sangha in Puri. It does not appear that there is any change of their reaching the Provincial target of ten thousand. In Balasore the Communists are attempting to convert the students at the newly opened college. In Sambalpur Communists have elected a Committee, but that seems to be the sum of their positive achievement.

119: Extracts from Fortnightly Report from Ajmer for the first half of November 1944

File No. 18/11/44 – Home Poll (I)
[NAI]

Kanhaya Lal Kalyantri and Mahendra Shastri were elected President and Secretary respectively of the Rajasthan Kisan Sabha and the following programme was chalked out:

1. Every Kisan should get a 'Patta' for the land cultivated by him.
2. Kisan Debt Liquidation Ordinance be enforced.
3. Agricultural Education be imparted to the peasants.
4. A campaign be launched to bring out social reforms amongst the peasants.
5. States should provide social facilities to the peasants.
6. Kisans should be taken in large numbers in assemblies and local boards.
7. Begar should be abolished.
8. Dispensaries be opened in rural areas.
9. Facilities be provided to Kisans to enable them to sell their products at favorable rates.
10. Kisans be consulted when an estimation of crops is taken.
11. Cattle breeding be encouraged
12. Facilities be granted to the Kisans to bring clay to build their houses and firewood for their household purposes.
13. Panchayats be formed. Litigation, early marriages and Nukta system be stopped
14. States should take up the village uplift work for the amelioration of the Kisans.

120: Sahajanand Saraswati to Hardwar Rai (intercepted letter) (dt 4.11.44)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Secret
C.I.D

Bihar Special Branch
Patna, the 9th November, 1944

Memo NO. 22256/57 S.B. 110(18)44

Copy of an intercepted letter dated 4-11-44 from Swami Sahajanand Saraswati, Sitaram Ashram, Bihar Patna to Hardwar Rai 69 Manohardas Street, Sonapatti, Calcutta.

Dear Hardwar Rai,

As I wrote you before, now I have decided to come to Calcutta. Delay in the examination of teeth will prove dangerous. On 11-11-44 by the 24 Dn Loop Express I will leave Dinapur at 4.30 p.m. reaching Howra at 10.30 a.m. on 12-11-44.

There I will put up either with you or with Choudhari Mangal Pandey at 104 Grand Trunk Road, Salkia, Howrah. Pandey belongs to Dumraon and he insists that I should stay with him. If he will meet me at the Railway station then I will go to him, otherwise I will come to you.

Signed
Swami Sahjanand Sarawati

Forwarded for information to

P. Barnes Esqr. J.P.I.P., Deputy Commissioner of Police, Special Branch, Calcutta.

121: A. Rasul to Bankim Mukherji (intercepted letter) (dt 10.11.44)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Copy of a typed English letter of 7-11-44 - intercepted at Bowbazar P.O. on 10-11-44.

From Rasul AIKS, 421, Sandhurst Road, Bombay

To Com. Bankim Mukherjee, BPKS, 244, Bow Bazar St. Calcutta

All India Kisan Sabha
421 Sandhurst Road,
Bombay - 7-11-44

Dear Bankim Babu,

Here is letter (copy enclosed) from Swamiji in reference with one of your two letters to him,

obviously the earlier one dated 18th October for in the latter there was a suggestion for his treatment of tooth.

I wonder why he did not receive your second letter dated 29th October before writing on 4th November.

Yesterday we received a letter from Kesto Babu following which I wired Swamiji as follows 'Awaiting your reply Bankim's Letters 18th & 29th October. Meeting impossible third week, wire reply'.

Now I am waiting for his reply by wire. If he does not agree to Bombay. I shall issue notice of meetings at Calcutta.

Greetings

Rasul

Enclosure

Copy of Swamiji's letter

Shri Sitaram Ashram
P.O. Tal Bihar
Patna, EIC 4-11-44

Dear Rasul,

In reply to a letter from Com. Mukherjee I had informed him on the 19th October last that the meeting of the Constitution Committee as also the CKC might be held in Calcutta in the 3rd week of November as I would be at Calcutta in that month in connection with tooth examination. After that I left for the countryside to run a training course for our workers.

But after my return today I find a letter from him from Bombay saying that the same meeting may be held at Bombay. I am surprised to read it. It is quite impossible. I may not be able to attend those meetings at Bombay. Because unless I am free from Calcutta how can I come to Bombay? After all my teeth are to be uprooted it may take a full month or so. I shall not reach Calcutta before the 17th of this month. This is my helplessness. But if I am free earlier I may come there even in the first week of December. But I am afraid if we begin to discuss political matters in the CKC a peculiar situation may be created which may harm our main object of the meeting.

I am writing these lines in a hurry.

Please confirm Com. Bankim of it

S.S. Saraswati
Signed S.S.S.



122 Extracts from Fortnightly Report from Madras for the second half of November 1944

File No.18/11/44 - Home Poll (I)
[NAI]

Communists all over the presidency seem to be perturbed at the attitude adopted towards them by these Congress Assemblies. Leading Communists of Madras and representatives of the districts recently met and discussed the future programme of the party in the light of these differences though no definite conclusions appear to have been reached. In some places as already reported, they have already come into open collision. In Kisan there was a scuffle between a communist and an orthodox Congress at a meeting held at Gudivada. In Malabar, there have been clashes already at various meetings and the district authorities are taking action to control such meetings by licences under the police act. It is reported that at Calicut public meeting a Communist heckled the Congress speaker on his refusal to answer the question whether the civil disobedience movement of 1942 was launched by the Congress and if not, why he was blaming the Communists for not helping the Congress in the 'fight for freedom'.

Coming to what may be termed their more orthodox activities, Communists have been busy again over National Unity Week and continued propaganda for Hindu-Muslim Unity. Pandit Jawaharlal's birthday also gave them an opportunity for holding meetings and processions.

Both sides continue to woo the Kisans. In Coimbatore the Communists are reported to be attempting to form Kisan Sangams in different places. In Calicut the Malabar Kisan Council wanted to make arrangements to hold the next session of the All India Kisan Conference in March in Malabar district. It has been decided, however, to refuse permission in view of the transport and food difficulties that will arise, not to speak of the strike and agitation that will most probably follow. In Tanjore district, the Mirasdars of Mannargudi, where there has been trouble before, have decided to form a 'Sangam' in order to meet the contingency of the labourers striking work during the harvest season.

123: Extracts from Fortnightly Report from Bihar for the second half of November 1944

File No. 18/11/44 - Home Poll (I)
[NAI]

Kisan Sabha - There is reason to think that Swami Sahajanand is growing nervous about the propaganda among Kisans which is being carried out by Congress under Gandhi's instructions. It is reported that the present leaders of the Kisan Sabha fear that a rival organisation may be set up under the aegis of the Congress.

124: Sahajanand Saraswati to Umar Faruq (intercepted letter) (dt 20.11.44)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Strictly Secret

Criminal Investigation Department
North West Frontier Province

Interception Report

Swami Sahajanand Saraswati, President of the All India Kisan Sabha, 104 G.T. Road, Sulkhia, Howrah, in an English letter dated the 20th November, 1944, addressed to Comrade Umar Faruq of Malikpur, District Hazara, writes to inform him that an extraordinary meeting of the Constitution Sub-Committee would be held on 29th November and the C.K.C would be meeting on the 30th November, 1944. The writer has urged that the addressee, Comrade Hansraj and Mian Akbar Shah must be present at the above meetings. The urgency of their attendance is explained in the following words.

It is becoming increasingly difficult and almost impossible for persons like myself to continue in the A.I.K.S. as at present constituted and being conducted. It is being deliberately sought, I regret, to be used as a mere appendage of the C.P. and I cannot tolerate it any longer. This will be my last attempt to right things and amend them properly'.

No. 604-6 / NCC dated Peshawar the 30th November, 1944.

Copies forwarded to:

1. G.C. Ryan, Esq. I.P. Asstt. Director (P) I B. H.D. Government of India, New Delhi
2. P. Barnes, Esq. I.P. Deputy Commissioner of Police, S.B. 14 Lord Sinha Road, Calcutta.
3. H.E. Bruce, Esq. M.C. I.P. Deputy Inspector-General of Police, C.I.D., Bihar, Patna.

for Asstt. to the Inspector General of Police
CID, NWF Province.

125: Bankim Mukherji to Umar Faruq (intercepted letter) (dt 21.11.1944)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

23-11-44 – Bankim Mukharji, General Secretary, 249 Bowbazar Street, Calcutta in his letter dated 21-11-44 (intercepted on the same date) to Comrade Umar Faruq, District Hazara, North West Frontier says that the Central Kisan Council will meet in Calcutta on the 30th instant to discuss the draft prepared by the Constitution sub-committee appointed by Bezawada and invites the addressee to attend. Comrade Hansraj, MLA has also been invited.

126: A. Rasul to Bukhari – (intercepted on 28.11.1944)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Secret

S.B. Sind, C.I.D. Karachi, dated 28th November 1944

It is learnt from a secret source that Abdulah Rasul c/o All India Kisan Sabha, 2 Sandhurst Road, Bombay 4 has addressed the following letter to Com. J. Bukhari, Labour Union office, Kutchery Road, Karachi.

You must have received the notice for the C.C. meeting fixed for 5th December in Calcutta. But Bankim, now wires, obviously on Swamiji's Insistence out of consideration for some Bihar comrades, that the C.K.C. must meet on 30th November, Swamiji who is now in Calcutta for treatment wanted in an earlier letter to me that the C.K.C. should meet in the last week of November. Accordingly C.K.C. is to meet on 30-11-44 instead of 5-12-44 as previously notified. So please inform Calcutta early when you arrive there. I expect to leave Bombay on 25th reaching Calcutta on 27th. I have asked Doctor to reach Calcutta on 28th so that he will have to start from Lahore on 26th. If you accompany him on the journey you can fix up your programme accordingly.

Copy forwarded with compliments to:

The Dy. Commissioner of Police,
S.B. (I), (I.D., Bombay,
The Dy. Commissioner of Police
S.B. Calcutta
The Assistant to the DIG Police
CID, Punjab Lahore
for information.



127: Umar Faruq to Bankim Mukherji (intercepted letter) (dt nil)

Govt. of Bengal, Office of the D.C.P. (Sp. Br.) File No. SK 511/44
[Bengal State Archives]

Copy of an English letter dated nil, intercepted at Bow Bazar P.O. No. 5/12/44.

From
Umara Faruq.

To
Com. Bankim Mukherjee, MLA
General Secy., A.I.K.S.,
249 Bowbazar Street,
Calcutta

Dear Bankim Babu,

Received your letter dated 21-11-44¹ & on 29-11-44² and a letter from Sahajanand Swamiji³ along with a letter from Com. Rasul on 28-11-44¹. I have wired Swamiji in reply. I am writing you this note in reply, that it is not useful to attend the meeting, because it takes me 4 days, to reach Calcutta, when the meeting will be over I request you to send me the proceedings of meeting. If C.K.C. requires my humble suggestions, I have been suggesting to Swamiji to adopt means by which we can turn K.S. to be a mass party, a basis for the true C.P.I. Comrade, in India the land question varies so much that we have to take into account all the provincial conditions of land and adopt our A.I. constitution according to it.

As we three are left now, I, Hansraj and Akbar Shah to work in the Kisans and enrol Kisans to fulfill our quota all the CPI Comrades are walking out, so we are busy and we have already declared a provincial conference on 20: 21 Dec. in order to consider our settlement report, which has suggested 20% enhancement of the assessment.

These are the conditions which are forcing me not to leave the station.

With anti-fascist greetings
Yours comradely

Umar Faruq.

1. Doc. 125.
2. Not printed.
3. Doc. 124.
4. Not printed.



128. Swamiji appeals to Congressmen – News item from *Hitavada* dt 12.12.1944

Hitavada
[NMML]

Do Not Form Rival Body
Work in All India Kisan Sabha
(December 12, 1944)

Bihta,

'It is gratifying to note that Mahatma Gandhi has admitted that Congress stands for Kisan-Mazdoor Praja Raj in India. He has further admitted that land should not belong to the absentee landlord and that the Zamindari system has to be abolished. He has also recognised the right of class organisations like the Kisan Sabha to have their class emblem or flag side by side with the National emblem. All this on the one hand. On the other, he has advised Congressmen to organise the Kisans including landless labourers on the basis of the ways and means adopted to solve their day-to-day problems and grievances. And Congressmen too have held and are holding conferences through out the country to come to a definite decision regarding the line to be adopted in this connection.

'In the circumstances, it is but natural that they should turn to the All India Kisan Sabha, the only existing organisation of the Kisans in the country, before taking up a definite stand in the matter.

'It is at this stage that various voices and opinions for and against the Kisan Sabha are heard and Congressmen are accordingly advised to join the same or organise a brand new Kisan Sabha or re-organise it under a different name. While so doing, the advocates of the rival Kisan Sabha which is practically the same thing as its reorganisation under a new title, level charges against the All India Kisan Sabha that it has become anti-national and anti-Congress and a mere prop of imperialist leadership, especially during the post- August days, and so on and so forth.

'Thus it is sought to persuade Congressmen to join forces in organising a rival Kisan Sabha as a wing of the Congress or otherwise. Hence some clarification on our part is urgently needed.

'The policy, programme and practice of the All India Kisan Sabha are broad-based and its doors are ever open not only to all anti-Imperialists and lovers of India's freedom, but they are always welcome. The very creed of the Sabhas emphasises this point by laying down that.

'The object of the Sabha is to establish, in conjunction particularly with the movement for national freedom, a democratic state in India'.

'But because much capital has been made out of the supposed war-policy of the Sabha, it is but meet and proper to narrate the barest facts in brief.

'As far back as February 1942 the Sabha thus declared its considered view with regard to the much-debated imperialist war versus people's war slogan.

Considerations of military strategy and imperialist security have combined with the pressure of their freedom-loving people to align Britain and America with Russia and China in their fight against the Axis-Power.

A war of this unparalleled magnitude against totalitarian Fascist states can only be successfully prosecuted with the willing and whole-hearted cooperation of all sections of the people in the true interest of their freedom and well-being. It is such a people's war that is being successfully waged by Russia. . . . Similarly this war can effectively be converted into an Indian people's war only when it is fought under the leadership of a national government and with the willing and hearty cooperation of the people of India.

'And as regards our attitude towards war-efforts, while the Kisans have been asked only to 'render all possible aid to Russia and China and help to organise the Friends of the Soviet Union', it has been laid down expressly that 'Armed resistance can however, be organised only on the basis of national Government'. And if we have not supported or opposed war efforts as such, it is simply because we prefer no slavery either the existing or a fresh one.

'And even during the post August days a good number of our best workers in Shahabal, Gaya and other districts of Bihar could not escape the anger of the mighty bureaucracy and were tired, prosecuted and imprisoned. This was the case more or less in some other provinces too. Is this the proof of the Kisan Sabha having become a mere prop of imperialist leadership or having gone anti-national and anti-Congress? The history itself of the Bihar Provincial Kisan Sabha since its very inception in 1929 and later on that of the All India Kisan Sabha is the positive proof, if any proof is needed, of how the Sabha has, from time to time, applied to itself a self-denying ordinance and helped every national movement initiated by the Congress including the Assembly elections. Congressmen themselves can bear witness to it. Therefore there is no reason, I venture to say, on the part of Congressmen to decry and outlaw the All India Kisan Sabha and form a new one.

'But as regards its being made organically a wing of the Congress, I make bold to say that it will not pay in the long run. Rather the move will naturally encourage other parties and groups, which do not see, unfortunately, eye to eye with the Congress in matters political, to organise similar Kisan Sabha as their own wings, with the inevitable result that instead of there being a solid mass organisation of the Kisans only confusion and disruption will rule supreme and our entire energy is bound to be wasted in vilifying one another even from and if the name of the mass and class platforms. This will be a distinct disservice to the noble ideal of freedom we all love and aspire after.

'In this connection I am happy to state that some of the tallest Congressmen in Bihar and U.P. have expressed to me their considered personal opinion against the formation of the rival Kisan Sabha, and at least one of them has emphatically expressed himself against the Kisan Sabha being organically connected with the Congress. But if Congressmen everywhere join the Sabha in a body and organise it in right earnest their purpose will be served even without turning it into a regular wing of the Congress — I am confident.

'Then again with a view to allay their fear that the existing majority of a particular political party in the Kisan Sabha may try to impose in the beginning its political line and policy on the Congressmen joining the Kisan Sabha, a three-fourths or some such majority is proposed to be incorporated in the Sabha's constitution for any political resolution to get passed.

'Similarly other basic changes too in it are going to be shortly introduced which will enable fully the primary Kisan Sabhas formed independently in a group of villages to get themselves directly affiliated to and represented in the All India Kisan Sabha and Provincial Kisan Sabhas, and not through the Thana and District Kisan Sabhas as at present.

'This process will result in fully reflecting the actual strength of each party and group, on

the basis of its work, in the highest organs of the Sabha, and thus the group that is most active is bound to dominate it very soon.

'Therefore I venture to make an earnest appeal to all patriots and political worker of various parties and groups in general and Congressmen in particular to join the Kisan Sabha or otherwise help it in its practical work of serving the Kisans during these days of stress and strain, and thus to contribute their full force in the building of a solid and well-knit mass movement which cannot but play a historic role in the impending fight for freedom of the country.

Swami Sahajanand Saraswati

129 Sahajanand Saraswati to Indulal Yagnik

Indulal Yagnik Papers - File No. 6
[NMML]

All India Kisan Sabha

President
Swami Sahajanand

Shri Sitaram Ashram
P.O. & Tel. Bihta E.I.R.
Patna

Camp Benaras
No

Dated 21-12-1944

Dear Indulalji,

I came over here yesterday evening to have a talk with B. Sampurnanandji, Ex. Minister on the question of the Congressmen joining the existing Kisan Sabha. I am glad to inform you that personally he is opposed to forming rival Kisan Sabhas and for that matter any class organisation in opposition to the existing ones. He goes further and says that organically these class organisations should not be linked with the national Congress though he will naturally prefer Congress minded workers joining predominantly the Kisan Sabha and other such organisations. He wants to consult Tandonji¹ in the matter before he advises publicly Congressmen to join the Sabha. If he and Tandonji both agree he hopes to get it passed by the assembly of the UP Congressmen by the 3rd week of January next. So it is all right.

But I am sorry I have got no reply from you to my long. letter written from Bihar on the 7-12-44 after my return from the meeting of the C.K.C. at Calcutta. Please wire me if you may come to Bombay to meet me there and discuss the whole timing. I shall leave for Bombay after the receipt of your letter and write. So be prompt and wire. I had got no reply from you will then 19th. I am returning to Bihta on the 23rd or 24th.

Sincerely yours
S. Saraswati

1. Purushottam Das Tandon*

130 Sahajanand Saraswati to Indulal Yagnik

Indulal Yagnik Papers – File No. 6
[NMMI]

President
Swami Sahajanand Saraswati

All India Kisan Sabha
Shri Sitaram Ashram
Patna

31.12.1944

Dear Indulalji,

Happy to receive your wire just this morning. After so long a silence you inform all at once that you may meet at Bombay. Only if I am able to reach Bombay on the 10th January 1943. I have already wired back by saying that I am reaching Bombay on the 9th January. I must be back here by the 14th of January in any case. Hence I am reaching Bombay on the 9th. You may come then if possible on the 9th otherwise on the 10th. I shall be reaching there by the Bombay Mail as usual, which reaches there in the afternoon. I am informing Com. P.C. Joshi to arrange for my lodging etc. at some suitable place and hope he will do it all-right.

Sincerely yours,

S. Saraswati

P.S.

I have issued rather long statement. The Congress and the Kisan Sabha sent a copy to you also.¹ Hope you like it.

Signed

Dear Indulalji,

I hope you will agree with me in the matter of this reply to Dr Adhikari. He wants my approval for the pamphlet to be published by the 'P.P.H' giving all the resolutions and a factual account of the session at Bhakana. I am sending a wire too to him to postpone the publication.

I hope, you will send a pucca man to Jodhpur on the 25th to be present in the Kisan Conference and bring a true report of the situation there. I have already written you in the matter just after my return from Bhakana and hope you have got that letter.

I got a long wire from Prasada Rao of Andhra to open the Kisan Conference there where he hopes to rally 25,000 Kisans in my name. So I am reaching there by the 28th or 29th and returning soon.

I hope you will come to Gaya to take part in the Training Camp we propose to start there from 16th May

Sincerely yours,

Signed S. Saraswati.

1. Document no. 128.

131: Extracts from draft report from 1944-45 submitted by the General Secretary at the Ninth Annual Session of the A.I.K.S. held at Netrakona (Mymensingh, Bengal) on 8 and 9 April 1945

Home Political, C.P.I. 1943/12
[P.C. Joshi Archives – JNU]

V. The Kisan Sabha and Swami Sahajanand

This Ninth Annual Session of the All India Kisan Sabha, having noted various press statements issued by Swami Sahajanand Saraswati, in his capacity as the President of the Sabha for the last year, and having heard the report by the General Secretary on the correspondence that passed between him and Swamiji in regard to the latter's press statements resolves as follows:

1. The disciplinary action announced by Swamiji in a press statement and his letter dated 28th February. Suspending the General Secretary, the Central Office the Bengal Provincial Kisan Sabha and some District Kisan Sabhas was unconstitutional and uncalled for. Under the Constitution of the All India Kisan Sabha the President has no powers for taking such action.

2. The argument advanced by Swamiji in justification of his action is that the said organs of the Sabha have flouted the Sabha's decision to be neutral on the issue of Pakistan and carried on propaganda in favour of the same. Now the fact of the matter is that one District Kisan Samiti in Bengal had passed in September last a resolution recommending to the AIKS to accept the right of Muslim to self-determination and another asked the AIKS to reopen the question and that the Organisational Reportage No. 5 issued from the General Secretary's Central Office in Bombay and recorded the fact. This could by no means be construed as violating the decision of the Sabha on the issue of Pakistan, for it is the democratic right of a lower unit to ask a higher unit to reopen a question for discussion and decision. All the same, if Swamiji thought it did, he could have called a meeting of the CKC and placed the matter before it for action. But instead, he announced the precipitate disciplinary action in the press which cannot but be construed as disruptive as it was calculated to disorganise the preparations for the All India Session and to discredit the Sabha in the eyes of the public.

3. The General Secretary, therefore, correctly called a meeting of the CKC which met in Calcutta on the 8th of March, and passed a resolution declaring Swamiji's action as unconstitutional and uncalled for, and called upon the Bengal Provincial Kisan Sabha to proceed with the preparations, for the All India Session. The resolution appealed to Swamiji to abide by the democratic discipline of the Kisan Sabha and to attend the Annual Session of the Sabha at Netrakona and appeal to his comrades of the AIKS if he were dissatisfied with this resolution of the CKC. This CKC resolution of 8th March is hereby endorsed

4. Swamiji who was specially requested to attend this meeting, instead of doing so, declared first that this meeting was unconstitutional and then issued a statement on the 30th of March that he had decided to resign from the Presidentship of the AIKS. On March 25th again he issued another press statement, suspending all the members of the CKC who attended or supported the Calcutta meeting. He also declared that all the Provincial Kisan Sabha except

that of Bihar were suspended as they had not sent delegates fees etc. by the 14th March to him as the President and according to him, the only constitutional authority of the Sabha left after the suspension by him of the Central Office. Before that in a letter dated 4th March, Swamiji communicated the resignation of his Presidentship to the General Secretary and in the P.S. to that same letter he had stated that the President of the Sabha had not accepted his resignation. All these amazing actions are not only unconstitutional but are unworthy of the President of a great democratic organisation like the Sabha.

5. The Sabha deplors that Swamiji who is one of the founders of the Sabha and has done so much for its growth, should be so blinded by anti-Communist prejudices that he should indulge in accusations and actions against the Sabha which only go to help its enemies. Swamiji's charge that the Sabha is Communist-dominated is a baseless slander which the enemies of the Sabha are continually circulating. Though Communists are in a majority in all the Provincial Kisan Sabhas except in Bihar, they have never used their majority to pass resolutions which patriotic, anti-Fascist and Kisan loving Congressmen and Leaguers would not support.

Swamiji's accusation that the Communists have made the Sabha anti-Congress is equally untrue and unworthy of him. The Sabha has certainly campaigned against the 'Sabotage movement' and has been in the forefront agitating for the release of leaders and advocating National Unity for National Government.

Swamiji's charge that the Communists used the platform of the Sabha for propagating their policy of Pakistan is equally untrue. The fact of the matter is that it is Swamiji who used the Kisan Sabha platform, as at Bezwada to ridicule Pakistan and thus wound the national sentiments of the Muslim Kisans. Communists in the Kisan Sabha though they have always wanted that the Sabha should accept self determination as the basis of Congress-League settlement a principle already accepted by Gandhiji and the Congress have so far refrained from pressing it in the Sabha in deference to the resistance offered to it acceptance by Swamiji and his friends.

6. The Sabha appeals to swamiji to his love for the Kisan masses and to the loyalty which he professes to the Kisan Sabha and calls upon him to accept this democratically arrived verdict of the Sabha and submit to it. If he persist in the stand he has taken it will only mean conflict in Bihar and temporary confusion. Hence the Sabha directs the General Secretary to get into touch with Swamiji and to make another attempt to persuade him to accept this resolution and the democratic discipline of the Sabha.

VI. The Kisan Sabha and Other Patriots

The Eighth Annual Session of the All India Kisan Sabha adopted a resolution on the Kisan Sabha policy which made it clear to all patriots that the policy and practice of the Kisan Sabha is broad-based enough to enable every anti-Fascist, every lover of freedom, to whatever party he may belong, to come into the Sabha and to serve the Kisans and to organise them for the solution of the most difficult problems, which face our country today.

Reiterating this resolution of the last Annual Session, the CKC at its Calcutta meeting in December last appealed to the large number of released Congressmen who wanted to do Kisan work and to all other patriots and political workers of all parties to join the Kisan Sabha or otherwise help in this practical work, which the Kisan Sabha is doing in these days of stress and to help in building the powerful mass movement which cannot but play a great role in the fight for the freedom of the country.

The Sabha notes with great satisfaction and pleasure that a number of leading patriots in the country have shown appreciation of the patriotic work done by the Kisan Sabha and have

blessed its activity and workers. It notes with equal pleasure and gratitude that many other patriots in the country have responded to the call of the Sabha by actually joining its ranks. It again assures all patriots that it will continue to serve the Kisan masses and defend its democratic and broad-based character with the same zeal as it has done in the past. It also assures all Congressmen and Leaguers that the growth of the Kisan Sabha as an independent kisan organization, far from weakening the Congress and the league, will strengthen both by building the patriotic consciousness of the peasantry through its economic struggles.

The Sabha notes with extreme regret the tendency among a section of Congressmen and other patriots to start rival kisan organizations in the country and appeals to such elements to realise that genuine and effective service of the kisans and the task of guiding them to make their due contribution to the national movement can be done through their class organizations such as the Kisan Sabha only if such an organisation unifies the Kisans on the basis of their immediate economic issues, irrespective of the political and other differences that may exist among sections of the kisans of the political workers who work in the Kisan Sabha. Political decisions have to be taken by the Kisan Sabha in the measure in which it can be done without disrupting its basic unity as a kisan organisation. It is by following this course that the All India Kisan Sabha has grown during the last nine years into a broad and powerful organisation embracing 8 lakhs kisans as its members and many more times as many as its followers. It is due to this policy that kisans and kisan workers have joined it irrespective of difference in caste or creed. It is due to this policy that it has successfully led numberless kisan struggles and secured for the kisans their due justice.

The formation of rival kisan organizations is therefore, not just an attack on the kisan Sabha as an organisation. It amounts to dividing the ranks of the kisans as kisans to weakening their strength and to defeating their struggle for justice against zamindari and other exploitation because of such division. It amounts to paralysing the Kisan Sabha as a weapon for rousing the kisans to play their due role in the struggle for national freedom.

While appealing to all patriots, desirous of serving the kisans, to join the kisan Sabha, therefore, the Sabha also brings to their notice the dangerous and disruptive nature of the tendency to form rival kisan organizations and appeals to them to put down all such tendencies to form rival organizations with all the firmness demanded by elementary loyalty to the needs and interests of the oppressed and exploited Kisan masses. The loyalty of the Kisan Sabha to the cause of the kisans will also necessitate its conducting an unrelenting struggle against disruptive rival organizations.

The Kisan Sabha also reminds the Congressmen Leaguers and other patriots that the most important constructive work in the countryside today is the struggle to get fair and adequate price for agricultural produce, to make food and other essential commodities available to all at cheap rates, to fight landlord and official *zoolum*, to overcome the difficulties that stand in the way of increasing food production and otherwise to help the villagers to overcome their difficulties and that for doing this the best way is to join and strengthen the Kisan Sabha. It draws the attention of the League to the fact that the over whelming majority of Muslims also are kisans where lives can be improved only by strengthening the Kisan Sabha. It appeals to all other patriots in the country to note that to help the Kisan Sabha to do its practical work is to serve the majority of the people in our country.

Finally the Sabha calls upon all its units to make a determined effort to draw more and more Congressmen, leaguers and other patriots into the Kisan Sabha, thus still further strengthening the Sabha

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